DEPARTMENT OF LABOR & ECONOMIC GROWTH

TAX TRIBUNAL

***PROPOSED* PRACTICE AND PROCEDURE**

Filed with Secretary of State on

These rules take effect 15 days after filing with the Secretary of State.

(By authority conferred on the tax tribunal by sections 32 and 49 of 1973 PA 186, MCL 205.732 and MCL 205.749.)

R 205.1101, R 205.1111, R 205.1115, R 205.1120, R 205.1125, R 205.1130, R 205.1135, R 205.1140, R 205.1145, R 205.1150, R 205.1155, R 205.1201, R 205.1202, R 205.1205, R 205.1208, R 205.1210, R 205.1215, R 205.1220, R 205.1222, R 205.1225, R 205.1230, R 205.1235, R 205.1240, R 205.1245, R 205.1247, R 205.1250, R 205.1252, R 205.1255, R 205.1264, R 205.1270, R 205.1278, R 205.1280, R 205.1283, R 205.1285, R 205.1290, R 205.1301, R 205.1305, R 205.1310, R 205.1312, R 205.1313, R 205.1315, R 205.1317, R 205.1320, R 205.1330, R 205.1332, R 205.1335, R 205.1340, R 205.1342, R 205.1345, and R 205.1348 of the Michigan Administrative Code are amended, R 205.1113, R 205.1117, R 205.1128, R 205.1129, R 205.1137, R 205.1142, R 205.1221, R 205.1231, R 205.1232, R 205.1233, R 205.1234, R 205.1237, and R 205.1265 are added to the Code, and R 205.1249, R 205.1257, R 205.1260, R 205.1275, R 205.1288, R 205.1303, and R 205.1333 are rescinded as follows:

PART 1. GENERAL **TRIBUNAL RULES** ~~PROVISIONS~~

R 205.1101 Definitions.

Rule 101. (1) As used in these rules:

(a) "Act" means ~~Act No. 186 of the Public Acts of~~ 1973 **PA 186**, ~~as amended, being §~~**MCL** 205.701 to **MCL 205.800**. ~~et seq of the Michigan Compiled Laws~~.

(b) "Answer" means the formal written document filed in response to a petition.

- *Definition of "answer" may be too broad, as it would incorporate the "first responsive pleading" which could be a motion for more definite statement, a motion for summary disposition, etc. Normally under the MCR, motions are not pleadings. Proposed Rule 225, for example, refers to an "answer" when it may be it was not intended to include a motion. Further Rule 245 differentiates between an "answer" and a "responsive motion."*

(c)~~(b)~~ "Authorized representative" means an attorney or other person who is selected by a party to appear on the party's behalf before the tribunal.

(d) "Case information statement" means the written document described in R 205.1240 that serves as the cover page of a petition and that contains information specified by the tribunal.

(e) "Case management report" means the scheduling order and report approved by the tribunal after consultation with the parties prior to or at the case management conference required by R 205.1250.

(f) "Chair" means the tribunal member appointed by the governor to assign matters, apportion business of the tribunal, and perform other duties prescribed by law.

(g)~~(e)~~ "Clerk" means the chief clerk or a deputy clerk of the tribunal.

- *Suggest that you insert a definition of "contiguous."*

(h) "Default" means a failure as described in R 205.1247 to proceed as required by these rules or as ordered by the tribunal.

(i) "Defect" means the failure as described in R 205.1202, R 205.1247, and R 205.1305 to pay the fee required for the filing of a petition or motion, as provided by these rules.

- *TTR 101(i) - definition of defect does not include a failure to allege facts as required in the Petition.*
- *Should a "defect" be limited to failure to pay the fee? Why not call it what it is?*
- *Members should have the authority to issue defects.*

(j)~~(d)~~ "Entire tribunal" means the hearing division of the tribunal other than the small claims division.

(k)~~(e)~~ "General property tax act" means ~~Act No. 206 of the Public Acts of~~ 1893 **PA 206, MCL 211.1 to MCL 211.157**~~, as amended, being 211.1 et seq. of the Michigan Compiled Laws~~.

(l)~~(f)~~ "Hearing officer" means an administrative law judge who is authorized to hear any matter assigned by the tribunal as provided in section 26 of the act.

- *TTR 101(l) - definition of hearing officer – pursuant to the new rule hearing officers appear to be able to handle more than small claims matters.*

~~(g) "Hearing referee" means an individual, other than a hearing officer or member of the tribunal, who is authorized to hear any small claims division matter assigned by the tribunal as provided in section 61 of the act.~~

~~(h) "Homestead property" means the portion of a dwelling or unit in a multiple-unit dwelling which is subject to ad valorem taxes and which is owned and occupied as a principal residence by an owner of the dwelling or unit.~~

(m)~~(i)~~ "Member of the tribunal" means an individual who is appointed by the governor as a tribunal judge with quasi-judicial powers as provided in the act.

(n) "Michigan court rules" means the rules that govern practice and procedure in all courts established by the constitution and laws of the state of Michigan, as adopted by the Michigan supreme court effective March 1, 1978, including amendments through May 1, 2006.

- *TTR 101(n) and (o) limit reference to the Michigan Court Rules to all amendments through May 1, 2006. This is contrary to references to the MCR later in the rules and would require practitioners to use those rules even after they have been amended, creating a time warp issue where the rules constantly change in terms of regular practice but not in the Tribunal.*
- *Should read "as amended," not "including amendments through May 1, 2006."*
- *Do we want to limit the "Michigan Court Rules" to amendments through May 1, 2006, creating a situation, as time passes, where the MCR will say one thing for circuit court practice, but a different MCR (excluding changes after 5/1/06) would provide something different? Given that its so difficult to promulgate rules, would it not be better to*

incorporate the MCR, as they are changed by the Supreme Court, leaving it to the Tribunal to promulgate a rule should such changes not be acceptable to the Tribunal?

(o) "Michigan rules of evidence" means the rules that govern evidentiary matters in all courts established by the constitution and laws of the state of Michigan, as adopted by the Michigan supreme court effective March 1, 1978, including amendments through May 1, 2006.

- *TTR 101(n) and (o) limit reference to the Michigan Court Rules to all amendments through May 1, 2006. This is contrary to references to the MCR later in the rules and would require practitioners to use those rules even after they have been amended, creating a time warp issue where the rules constantly change in terms of regular practice but not in the Tribunal. (repeat from (n) above)*
- *(o) Will MREs replace old TTR rule and APA standard regarding admissible evidence?*
- *Should read "as amended," not "including amendments through May 1, 2006."*
- *Same comments as to "Michigan Rules of Evidence: as with respect to "Michigan Court Rules."*

(p)~~(j)~~ "Non-property tax appeal" means any proceeding, other than a property tax appeal, over which the tribunal has jurisdiction.

(q) "Petition" means a formal written document as described in R 205.1240 that states the facts and circumstances relied upon as a cause of action. A petition initiates the commencement of a proceeding in the tribunal. See MCL 205.735.

(r) "Petitioner" means the party who commences a proceeding in the tribunal by filing a petition.

(s)~~(k)~~ "Property tax appeal" means any proceeding relating to real and personal property assessments, valuations, rates, ~~special assessments,~~ refunds, allocation, or equalization or any other proceeding brought before the tribunal under the state's property tax laws. **For purposes of these rules, any proceeding relating to special assessments or property tax exemptions are considered to be a "property tax appeal."**

(t) "Respondent" means the party against whom a petition is filed.

(u) "Revenue act" means 1941 PA 122, MCL 205.1 to MCL 205.31.

(v) "Small claims division" means the residential property and small claims division created by section 61 of the act.

(w)~~(l)~~ "Taxable value appeal" means any proceeding relating only to the determination of a property's taxable value ~~through application of the lesser of 1.05 or the inflation rate~~ as provided in section 27a **and 27b** of the general property tax act. **For purposes of these rules, any proceeding relating only to the** ~~An appeal that requires a~~ determination of a property's taxable value ~~through application of a fraction, the numerator of which is the state equalized value for the current year, minus additions, and the denominator of which is the state equalized value for the immediately preceding year, minus losses, as provided in section 27a of the general property tax act,~~ is a property tax appeal.

(x)~~(m)~~ "Valuation disclosure" means documentary evidence ~~or other tangible evidence~~ in a property tax appeal which a party relies upon in support of the party's contention as to the true cash value of the subject property or any portion thereof and which contains the party's value conclusions and **sufficient** data **to determine the basis of the party's value conclusions**, valuation methodology, analysis, ~~or~~ **and** reasoning **in support of the party's value conclusions**. See ~~also~~ R 205.1252 and R 205.1283.

- *TTR101(x) – definition of valuation disclosure. The definition now requires not only a document which contains the parties' valuation conclusions, but also "sufficient data to determine the basis of the parties' valuation conclusions, valuation methodology, analysis, and reasoning in support of the parties' valuation conclusions." The issue arises as to who determines what is sufficient and will this create more problems.*
- *Require that a valuation disclosure include "work papers."*
- *Do not include "work papers." If the opposing party wants work papers they can get them in discovery. The volume would burden the Tribunal.*
- *I agree with the appropriateness of the definition "valuation disclosure," but would note that it does not square with several Tax Tribunal decisions where failure to comply with USPAP, for example, or failure to have been prepared by a licensed appraiser or an appraiser with a designation, effectively invalidated the valuation disclosure. What about the decisions requiring full narrative appraisals, as opposed to less comprehensive? These decisions are a trap for the unwary, and are grossly unfair to taxpayers who proceeded in accordance with what the Tax Tribunal spelled out as proper procedure, only to be effectively "non-suited" because of the particular views of a – generally – appraiser-member.*
- *Insert after the phrase "in a property tax appeal" the following: "whether or not the evidence is an appraisal performed under USPAP or other valuation summary,"*
- *I would ensure that the definition clarifies the error in past Tribunal decisions which required "an appraisal," "licensure" and application of USPAP. If the Tribunal is a "specialty court" it ought to be able handle an array of evidence.*

~~(n) "Small claims division" means the residential property and small claims division created by section 61 of the act.~~

(y) "Written summary" means documentary evidence as described in R 205.1252 and R 205.1283, other than a valuation disclosure, which an expert witness relies upon in support of the expert witness' opinion and which contains the expert witness' conclusions and sufficient data to determine the basis of the expert witness' conclusions, methodology, analysis, and reasoning in support of those conclusions.

- *I would leave this out. In Circuit Court no such reports, appraisals, or "valuation disclosures" are required before the witnesses testify. The parties are responsible for conducting discovery and learning the basis of forthcoming expert testimony. There may be a benefit to the Tribunal?*
- *This may have a benefit for assessors or taxpayers that are not represented by attorneys.*

(2) The terms defined in the act have the same meanings when used in these rules.

R 205.1111 Scope.

Rule 111. (1) ~~These~~ **The** rules **contained in parts 1, 2, and 3** govern ~~the~~ practice and procedure in all ~~cases and~~ proceedings before the tribunal. These rules shall be known and may be referred to as the "tax tribunal rules" and may be cited as "TTR."

(2) The rules in part 1 govern administration of the tribunal. Where the Michigan court rules are specifically referenced, the referenced court rule shall govern.

- *Like the clarity regarding the specific application of court rules. This would clarify once and for all that provisions regarding Offers to Stipulate (MCR 2.405)do not apply.*

(3)~~(2) R 205.1201 to R 205.1290~~ **The rules in part 2** govern ~~the~~ practice and procedure in all ~~cases~~ **proceedings** before the entire tribunal. **Where the Michigan court rules are specifically**

referenced in an entire tribunal rule, the referenced court rule shall govern. **If an applicable entire tribunal rule does not exist, then the provisions of chapter 4 of 1969 PA 306, MCL 24.271 to MCL 24.287 shall govern.**

(4)~~(3) R 205.1301 to R 205.1350~~ **The rules in part 3** govern ~~the~~ practice and procedure in all ~~cases~~ **proceedings** before the small claims division. If an applicable small claims division rule does not exist, then the entire tribunal rules shall govern, except for ~~R 205.1288 and~~ **rules that reference the Michigan court rules and** rules that pertain to discovery, which, in the small claims division, is by leave of the tribunal only.

(5)~~(4) If an applicable entire tribunal rule does not exist, the 1995 Michigan Rules of Court, as amended, and the provisions of chapter 4 of Act No. 306 of the Public Acts of 1969, as amended, being §§24.271 to 24.287 of the Michigan Compiled Laws, shall govern.~~ **The tribunal may, upon motion or its own initiative, permit a proceeding pending before the tribunal prior to the effective date of any amendments to these rules to proceed under the rules in effect at the time the case was originally filed, if the tribunal determines that application of the amended rules would not promote the efficient administration of justice.**

(6) These rules shall be construed to secure the just, speedy, and economical determination of every proceeding and to avoid the consequences of error not affecting the substantive rights of parties.

- *TTR 111 provides a dramatic shift from reliance on the Michigan Court Rules to reliance on the Administrative Procedures Act, and in particular the procedures beginning at MCL 24.271 et seq., unless a specific Court Rule is referenced or a Tribunal Rule provides otherwise.*
- *Change of scope – No MCTs unless specifically referenced; instead, APA governs. This may eliminate the problem as to when MCRs apply; often, a TTR rule may exist, but when it applies was not clear, and MCRs were applied instead.*
- *(6) How rules construed – AMEN!!*

- *Previous draft TTR 112 regarding Tribunal notices? Notices were generally helpful.*

R 205.1113 Computation of time.

Rule 113. In computing a period of time prescribed or allowed by these rules or by tribunal order, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period is included, unless it is a day during which the office of the tribunal is not open for business and, in that event, the period runs until the end of the next business day.

R 205.1115 Payment of fees or charges**; refunds of fees or charges**.

Rule 115. **(1)** ~~Payments~~ **All payments** to the tribunal for fees or charges of the tribunal shall be made in **United States currency either in** cash or by check, money order, or other draft made payable to the order of "State of Michigan" and shall be mailed or delivered to the clerk of the tribunal at the tribunal's Lansing office. **Payments may also be made electronically when a method for such payment is approved by the tribunal.**

(2) The tribunal shall refund excess payments only upon written request for a refund of a specific filing fee or charge.

- *116. Default. New default rules make more sense, and should save the Tribunal and parties time and aggravation.*

R 205.1117 Tribunal staff ~~and chief clerk~~.

Rule 117. (1) The tribunal shall ensure that all litigants have full and fair access to a hearing at the tribunal. To ensure such access, the tribunal staff may provide impartial general information to parties and the public. Impartial general information includes, but is not limited to, the following:

(a) Procedural information relevant to all tribunal proceedings.

(b) Processing information relevant to all tribunal proceedings including information necessary for the completion and filing of forms, pleadings, and other documents with the tribunal.

(c) Citation of statutes, rules, and opinions.

(d) Referrals to other state or local governmental agencies.

(2) Tribunal staff shall not provide information constituting accounting, legal, or technical assistance relevant to a federal, state, or local tax matter, as provided by section 25(3) of the act. Accounting, legal, or technical assistance includes, but is not limited to, the following:

(a) Procedural information relevant only to a specific tribunal proceeding.

(b) Processing information relevant to a specific tribunal proceeding including the assignment of the proceeding and the drafting, review, or issuance of decisions and orders. Information regarding the current status of a specific proceeding does not, however, constitute accounting, legal, or technical assistance.

(c) Research of statutes, rules, and opinions.

(d) Information explaining or discussing a decision and order or a tribunal member's action in a specific proceeding.

(e) Opinions expressing a legal or procedural conclusion, such as whether a property or taxpayer is subject to tax, whether a party should take action, whether a proceeding will be timely filed, or whether a party should or should not appeal a decision or order.

(f) Advice or statements that would tend to encourage or discourage the litigation of a proceeding.

(g) Referrals to specific tax practitioners.

(h) Assisting in the actual completion of a form, pleading, or other document, except in instances where the office of the chief clerk determines assistance is necessitated by a litigant's physical handicap or disability.

(3) The tribunal is not bound by the accounting, legal, and technical assistance given by tribunal staff and shall not consider the fact that accounting, legal, and technical assistance was given in the conducting of a proceeding or the rendering of a decision or order.

- *Numbering screwed up? Rule is consistent with practice in most courts.*
- *Include specific prohibitions against members of the Chief Clerk engaging in "ex parte" communications. This has been a problem with certain attorneys speaking to clerks in an effort to influence tribunal members.*
- *Consider some of the Judicial Canons.*
- *Need some guidance for non-attorney members regarding ethics of adjudication.*

R 205.1120 Records; removal; public access.

Rule 120. (1) ~~An~~ **No** original record, ~~paper,~~ document, or exhibit filed with the tribunal shall ~~not~~ be taken from the hearing room or offices of the tribunal or from the custody of a member of the tribunal~~,~~ **or** a hearing officer, ~~or a hearing referee,~~ except as authorized by ~~these rules or by~~ the **chair** ~~chairman~~ of the tribunal**, these rules,** or ~~except~~ as may be necessary for the clerk to furnish copies ~~as provided by law, to transmit records~~ to the court of appeals, ~~or~~ as **provided by law** ~~otherwise ordered by the tribunal~~. After the time for appeal has expired, the clerk shall make each party's respective exhibits available for return to the party. If an exhibit is not claimed within 90 days after the exhibit is made available for return, then the clerk may dispose of the exhibits at his or her discretion.

(2) Except upon order of the tribunal for good cause shown or as otherwise provided by law, all public records of the tribunal are available for inspection. Copies may be obtained from the clerk upon payment of the charge provided in R 205.1202.

R 205.1125 Docketing of cases.

Rule 125. (1) Upon the filing of the petition, the clerk shall do all of the following:

(a) Time-stamp all pleadings **and documents**.

(b) Assign an individual docket number to the proceeding.

(c) Secure all original pleadings **and documents filed in a proceeding** in a durable binder for safekeeping.

(d) Establish a separate docket record for each **proceeding** ~~case~~ on a form approved by the tribunal.

(2) The docket number assigned to each case shall be the permanent number of the proceeding and shall be affixed by the parties to all future filings in the ~~case~~ **proceeding**. The separate docket record established for each ~~case~~ **proceeding** shall contain entries of all pertinent filings ~~and proceedings~~ in the ~~case~~ **proceeding** and, together with the file containing all original pleadings, constitute the original record of the ~~case~~ **proceeding** to be preserved by the tribunal as prescribed by law.

R 205.1128 Abeyance.

Rule 128. (1) The tribunal may, upon motion or its own initiative, place a proceeding in abeyance.

(2) Proceedings that are placed in abeyance by order of the tribunal are automatically removed from abeyance when the condition justifying the abeyance no longer exists.

(3) The parties to a proceeding placed in abeyance by order of the tribunal shall each notify the tribunal within 21 days of the date the condition justifying the abeyance no longer exists as to the need for further action in the proceeding. A party that fails to notify the tribunal as required by this subrule shall be in default and the proceeding shall be subject to the sanctions provided in R 205.1247.

- *128 Abeyance. (3) Failure to notify is harsh, since it is not always clear which matters are in abeyance; requiring both parties to notify tribunal when case should be taken out is redundant. Makes more sense to require parties to inform Tribunal when a precedent involving major issue has been decided, and/or when the appellate system has finished with them. Also, abeyance is not defined. Recently, we had a case dismissed while allegedly under abeyance for failure to comply with discovery. Should discovery be allowed to proceed, while case may be frozen for years?*

- *Good start –long overdue. But need either a definition of "abeyance" or of the scope of "abeyance." In some instances, the Tribunal has compelled discovery that was made before the order of abeyance. Abeyance should stop all actions.*
- *Disagree with the past practice of "automatic removal". Parties may never receive notice of the resolution of a case in which they are not a party, particularly if the decisions are not published.*
- *I would suggest that the Tribunal consider expanding the time period to take action. 21 days is too harsh. Better yet change the practice from automatic to notification. Subsection 3 may be unnecessary.*
- *Abeyance – automatic removal I understand, but a penalty unless each party notifies the Tribunal that abeyance has ended within 21 days, the penalty being default, could be unfair. A decision by the Court of Appeals, for example, in a case to which neither party to the Tax Tribunal proceeding is involved, might well be handed down with a number of weeks before either party is aware of it. If it is a state tax case, the Attorney General's office will be aware of it, while the taxpayer's counsel may not. The penalty is too harsh, and there should be a requirement (which perhaps is implicit) that any notification to the Tribunal be copied to the other party. If this is done on the 21st day by the A.G., for example, and this is the first notice the other party has that the Court of Appeals has ruled in the unrelated pertinent proceeding, it is hard to believe the Tribunal would enforce its own rule.*

R 205.1129 Stipulations for entry of consent judgment.

Rule 129. (1) The tribunal encourages the resolution of proceedings through the filing of stipulations for entry of consent judgment and the entry of consent judgments.

- *Long overdue, and a big improvement. Rule looks to be well thought out, and should save the Tribunal much staff time. One question is why should not all matters in a consent judgment, agreed upon by the parties be enforceable somewhere?*

(2) The parties may submit a stipulation requesting the entry of a consent judgment, as to all or part of a proceeding, instead of a petition or at any time prior to the issuance of a final decision or order. The acceptance of a stipulation submitted after the conclusion of a hearing shall, however, be determined by the judge that presided over the hearing.

- *TTR 129(2) provides that the parties may submit a stipulation, however, if the stipulation is submitted after the conclusion of a hearing, the acceptance of the stipulation will be determined by the Judge. What this means is that parties will not be able to stipulate to a settlement after the conclusion of proofs in a trial, thereby taking away the ability of the parties to settle a case unless the Judge otherwise agrees.*
- *A good start. But provide greater certainty that settlements will be accepted. Doesn't the Tribunal have other work to do?*
- *Confirms a long-existing but not entirely known practice. Also like the lower filing fee.*

(3) The parties shall file 2 copies of the stipulation for entry of consent judgment each containing the original signature of all parties or their authorized representatives. There shall be no fee required for the filing of a stipulation for entry of consent judgment except as provided by R 205.1202 and R 205.1305.

- *Request that school districts also receive notice of the stipulations and all side agreements. After all they receive notice of the judgment.*

- *No, school districts should not receive notice of the stipulation unless they are a party and are willing to share the cost of litigation.*

(4) Stipulations for entry of consent judgment shall be presumed valid if the stipulations are in a form specified by the tribunal and contain the information required by this rule.

- *Does this still reserve the practice of reviewing stipulation to determine jurisdiction of issues and tax years? Need something stronger.*
- *Insert the word "substantially" between " and___ contain."*

(5) Stipulations filed in a property tax matter, other than a principal residence exemption, qualified agricultural exemption, or special assessment appeal, shall include all of the following:

(a) The parcel identification number or numbers of the property or properties.

(b) The classification of the property or properties.

(c) The name or names of the affected school districts.

(d) The property or properties' original true cash, state equalized, and/or taxable values for the tax year or years under appeal.

(e) The property or properties' proposed, revised true cash, state equalized, and/or taxable values for the tax year or years under appeal.

(f) If the stipulation is the initial pleading filed in the appeal, the mailing address and telephone numbers of the parties or their authorized representatives.

(6) Stipulations filed in a principal residence or qualified agricultural exemption appeal shall include all of the following:

(a) The parcel identification number or numbers of the property or properties.

(b) The classification of the property or properties.

(c) The name or names of the affected school districts.

(d) The amount of the original exemption and the amount of the proposed, revised exemption given to the property or properties for the tax year or years under appeal.

(e) If the stipulation is the initial pleading filed in the appeal, then the mailing address and telephone numbers of the parties or their authorized representatives.

(7) Stipulations filed in a special assessment appeal shall include all of the following:

(a) The parcel identification number or numbers of the property or properties.

(b) The classification of the property or properties.

(c) The amount of the original special assessment levy and the amount of the proposed, revised special assessment levy.

(d) If the stipulation is the initial pleading filed in the appeal, then the mailing address and telephone numbers of the parties or their authorized representatives.

(8) Stipulations filed in a non-property tax matter appeal shall include all of the following:

(a) The assessment numbers for all assessments under appeal.

(b) The amount of the original tax, interest, and penalties and the amount of the proposed, revised tax, interest, and penalties for the assessments under appeal.

(c) If the stipulation is the initial pleading filed in the appeal, then the mailing address and telephone numbers of the parties or their authorized representatives.

- *Stipulations – Non-property Tax -- ¶129(8)(c) – Would not the name, address, and telephone number of the parties or authorized representatives been required in the signature block on the Stipulation? If so, this is superfluous. If not, the rules should so require with respect to every document submitted to the Tax Tribunal in connection with the initiation of or prosecution/defense in MTT proceeding.*

(9) If the parties agree to a settlement of a proceeding, but disagree as to the computation of the judgment amount, then the parties may file a stipulation for entry of consent judgment and, by separate motion, request the tribunal to set a hearing date to determine the judgment amount.

- *Like this option.*

(10) A consent judgment entered by the tribunal is binding only in the pending proceeding and only as to those matters over which the tribunal has subject matter jurisdiction and authority to take action. To the extent a stipulation addresses matters over which the tribunal lacks subject matter jurisdiction or the authority to take action, the tribunal's entry of the consent judgment shall not be binding with respect to such matters, regardless of whether a written reservation is made in the consent judgment.

(11) The tribunal may relieve a party from a consent judgment as provided by Rule 2.612 of the Michigan court rules.

- *Take this out. The Tribunal can do this without rule. This just invites requests.*
- *Not sure the court rule here is what we want as it addresses "newly discovered evidence, fraud, misconduct…"*
- *Permit withdrawal with the consent of both parties.*
- *TTR 129(11) provides that the Tribunal may relieve a party from a consent judgment as provided by Rule 2.612 of the Michigan Court Rules. This Rule in the Michigan Court Rules provides that a party may be relieved from judgment where there is mistake, inadvertence, surprise or excusable neglect, fraud, newly discovered evidence, and any other reason justifying relief from the operation of the judgment. This proposed rule is particularly troubling because it appears to apply to a consent judgment where MCR 2.612 is only meant to apply to judgments entered by the court after hearing and is not meant to apply to cases where the parties have settled amicably. Furthermore, this would open up the consent judgments that are entered into to continued attack and not providing for the finality that is generally accepted with a consent judgment.*

(12) The tribunal shall not impose additional requirements on the filing or processing of a stipulation unless provided by the act or these rules.

- *If the Stipulation is the initial pleading in a property tax or similar matter, would not the Tribunal want the addresses of those to whom it has traditionally required notice of Petitions?*

R 205.1130 Decisions and orders; form; content; notice.

Rule 130. (1) A decision shall be **in writing or** stated in **the record** ~~a written opinion and judgment~~. A ~~written opinion and judgment~~ **decision, whether in writing or stated in the record,** shall include a concise statement of facts and conclusions of law stated separately and, upon order of the tribunal, shall be officially reported and published.

(2) An order shall be in writing or stated in the record.

(3) If a decision is stated in the record, the tribunal shall enter an order granting the decision on the record. The order shall be prepared by the parties unless otherwise ordered by the tribunal.

(4)~~(2)~~ Notice of entry and a copy of ~~the~~ **all** decision**s** and ~~all~~ orders**, unless the order is stated on the record,** shall be sent to the parties' authorized representatives or, if there is no authorized representative, to the party or parties at the time of entry.

(5) For the purposes of this rule, a "proceeding is submitted for decision" when the hearing has concluded or the times provided for the filing of transcripts or briefs has expired, whichever event is later.

- *130 Decisions. Rule looks to be more in conformity with the practice in courts, and should speed up decision writing.*

R 205.1135 Corrections of clerical errors.

Rule 135. Clerical mistakes arising from an oversight or omission in a decision or order of the tribunal or in the records of any proceeding may be corrected by order of the tribunal at any time upon motion ~~of a party~~ or ~~upon~~ the tribunal's own initiative.

R 205.1137 Designation of decisions and orders as precedential.

Rule 137. (1) Decisions and orders, although published, are not precedential unless adopted by a majority of the tribunal's members.

(2) Tribunal members and hearing officers shall follow the rule of law established in a prior decision or order designated as precedential that has not been reversed or modified by the tribunal or an appellate court.

(3) A decision or order shall be declared precedential, if the decision or order does any of the following:

(a) Establishes a new rule of law.

(b) Modifies an existing rule of law or extends it to a new factual context.

(c) Reaffirms a principle of law not applied in a recently reported tribunal decision.

(d) Involves a legal issue of continuing public interest.

(e) Resolves an apparent conflict of authority at the tribunal.

(4) If a majority of the tribunal's members determine that a decision or order should be deemed a precedential decision or order, the chair shall issue an order declaring the decision or order to be a precedential decision or order.

(5) If a decision or order is declared to be a precedential decision or order, that decision or order is binding precedent in the tribunal until reversed or modified in a decision or order issued by all of the tribunal's members or the state's appellate courts.

- *137 Designation of precedent. Long overdue, and looks to be well thought out. May wish to add a sub-rule allowing parties to request that a decision be designated as precedential, similar to MCR 7.215(D).*
- *Great. Let parties ask for a decision to be made precedential.*
- *Need to provide for modification or reversal if a statute changes?*
- *Precedential Orders – Do not know what "recently reported" means (§137(3)(c)). Further, there is no indication as to how those interested will be informed as to whether Tribunal decisions are precedential or non-precedential. Should not the Tribunal "publish" in some fashion the list of precedential decisions? Further, there is provision for reversal or modification by the Tribunal or an appellate court – what about statutory changes which would obsolete a Tribunal precedential opinion? Further, can a precedential opinion be limited by a non-precedential opinion? (Presumably not.)*
- *There should be some notation or designation that the decision is precedential.*
- *Should also designate decisions as nonprecedential.*

R 205.1140 ~~Disability~~ **Disqualification or disability** of tribunal members ~~and hearing officers~~.

Rule 140. **(1) A tribunal member may disqualify him or herself from conducting an assigned proceeding, upon motion, or his or her own initiative, whenever the tribunal member cannot impartially hear a case.**

- *Disqualification. Long overdue. Perhaps some grounds, or guidelines should be set forth, or included by reference, such as the Code of Judicial Conduct, or MCR 2.003(B). Differs from circuit court practice where chief judge reviews failures to disqualify.*

(2) A motion to disqualify shall be filed within 14 days after the moving party discovers the grounds for disqualification. The failure to timely file a motion to disqualify is a factor in determining whether the motion should be granted.

- *Fourteen day time period may be too tight.*

(3) The moving party shall include in the motion all grounds for disqualification that are known at the time the motion is filed. An affidavit supporting the grounds for disqualification shall be filed with the motion.

- *What happens if statements or conduct of the member occurs in the hearing?*

(4) The challenged tribunal member shall decide the motion. If the challenged tribunal member determines that the motion should be denied, the chair shall designate 3 tribunal members to review the motion and proposed decision to determine whether the motion should be denied as proposed.

(5) In the event of the **disqualification, unavailability, resignation,** death, sickness, or disability of a **tribunal** member ~~of the tribunal or a hearing officer~~ after the member ~~or officer~~ has heard any part of a case, his or her successor or alternate may continue the proceeding and decide the matter, if, in the discretion of the tribunal, continuing the proceeding will not injure a party to the proceeding or otherwise result in an injustice, or the tribunal may~~, in its discretion,~~ order the matter reheard.

- *Disqualification – 14 days after "discovery" could raise a problem, where more than one things are :discovered," which in the aggregate call for a motion, notwithstanding the first or second may not. Also would not "discovery" in many instances simply look to the representative, rather than "the moving party" – there could be a lot of people involved with a corporation or city, for example, some of whom knew but did not think about the event or action. Disqualification, unavailability, etc., reference to "will not injure a party to the proceeding or otherwise result in an injustice" is a very subjective test. In many cases one would not know, but only be able to suggest that it might "possibly" so result.*
- *Have you considered extending the rule to small claims.*
- *Tribunal should adopt some of the Michigan Judicial Canons particularly those regarding ex parte communications of members or the judges.*

R 205.1142 Assignments; assistance; expertise.

Rule 142. (1) The chair shall assign proceedings by a rotational method taking into consideration the complexity of the proceeding and the specialized property or non-property tax matter expertise necessary to resolve the proceeding.

(2) A tribunal member may, upon motion by either party, be assigned to assist in a proceeding if the member's training or property or non-property tax matter expertise will facilitate the rendering of a decision or order in a proceeding assigned to another tribunal member as presiding judge.

- *I like this. How will the Tribunal a two-judge panel if differences arise? Or, is the assignment exclusively for a particular issue.*
- *The Tribunal must ensure that constitutional claims are addressed by attorney members.*

(3) A motion requesting tribunal member assistance shall be filed within 14 days after the conducting of the prehearing conference or, if no prehearing conference is conducted, not later than 28 days before the commencement of the hearing. A response may be filed within 10 days of the service of the motion.

- *Section 142(3) – Where a new Tribunal member has been assigned to a case in the event of a resignation, death, etc., the timeframes for the motion would not work. What about where subsequent prejudicial behavior occurs, or comes to light?*

(4) A motion requesting tribunal member assistance shall be given to the chair. The chair shall consider and decide the motion. If the chair determines that the motion should be granted, the chair shall issue an order assigning the tribunal member to the proceeding. The order shall also indicate the extent of the assigned member's assistance in the proceeding. See also R 205.1220. Notwithstanding the extent of the assigned member's assistance in the proceeding, the presiding judge's decision shall govern with respect to the resolution of the proceeding.

- *142 Assignments; Assistance. Appears to be a well-thought out rule. How much of this was done informally? How much of this should have been done, and was not?*

R 205.1145 Costs.

Rule 145. (1) The tribunal may, upon motion or upon its own initiative, ~~allow~~ **award costs to** a prevailing party ~~in a decision or order to request costs~~.

- *Should clarify that "costs" does not include attorney fees.*
- *Can you define "costs." In several opinions, I have been denied costs because the Tribunal determined that I would have incurred them anyway.*
- *Costs are undefined in the rule, and in TTR 101. Are actual attorney fees to be considered costs? Outside of the Tribunal, they are a separate matter. In my opinion, attorney fees should not be awarded except where there is a finding (after a full hearing on the issue) of egregious conduct.*
- *Costs – if attorneys' fees cannot be ordered, would it not be helpful for the rule to so state?*

(2) **If costs are awarded** ~~the request is granted~~, the prevailing party shall file **and serve** a bill of costs ~~with the clerk~~ within 14 days of the entry of the order ~~allowing~~ **awarding** costs ~~and furnish a copy of the bill to each party in the case~~. A party may file a response objecting to the bill of costs or any item in the bill within 14 days after service of the copy of the bill. Failure to file an objection to the bill of costs within the 14-day period constitutes a waiver of any right to object to the bill.

- *What is a "prevailing party"?*

(3) The bill of costs shall state separately each item claimed and the amount claimed and shall be verified by affidavit of the party or representative. The affidavit shall state that each item is correct and was necessarily incurred.

(4) **The tribunal shall review the bill of costs and the objections, if any, and issue an order indicating the amount of costs to be paid** ~~Costs may be awarded to a prevailing party only when provided for by the tribunal in a decision or order~~.

R 205.1150 Appeals.

Rule 150. An appeal from a decision of the tribunal shall be taken in accordance with section 53 of the act **and the Michigan court rules**. If an appeal is taken to the court of appeals, then the appellant shall file a copy of the claim of appeal or application for leave to appeal with the clerk of the tribunal together with the appropriate filing fee.

R 205.1155 Record on appeal.

Rule 155. (1) If the clerk of the court of appeals gives notice to the clerk of the tribunal~~,~~ ~~pursuant to rule 7.210 of the Michigan Rules of Court,~~ that **a proceeding** ~~the cause~~ is ready for submission, or at any time upon order of the court, then the clerk shall transmit the **case** record ~~promptly~~ to the court of appeals.

(2) The **case** record shall consist of a copy of the tribunal's original file, including the following items:

(a) A certified list of docket entries showing the dates of filing and the nature of all documents filed and the date and disposition of all ~~proceedings~~ hearings conducted.

(b) All papers, including all of the following items:

(i) Notices.

(ii) Pleadings.

(iii) Motions.

(iv) Briefs.

(v) Intermediate rulings.

(vi) The decision or order being appealed.

(c) The original transcripts of the hearing in an entire tribunal case as provided by the parties.

(d) A certified statement of facts of the hearing in a small claims division case.

(e) Original exhibits.

PART 2. ~~MATTERS BEFORE~~ ENTIRE TRIBUNAL **RULES**

R 205.1201 Scope.

Rule 201. ~~This~~ **The rules in this** part ~~governs the~~ **govern** practice and procedure in all **proceedings** ~~matters~~ before the entire tribunal ~~division of the tribunal~~**, except that the rules in subchapter 2.300 of the Michigan court rules shall, as indicated herein, govern discovery in proceedings before the entire tribunal**.

- *201 – Discovery. An upgrade over the current rules. Depositions are now available. Production of docs makes more sense under the MCRS, and has been followed in practice, rather than the Tribunal rules.*
- *Still no subpoena authority for witnesses at trial.*

R 205.1202 Fees and charges.

Rule 202. The following fees shall be paid to the clerk in all entire tribunal proceedings:

(a) Upon the filing of a property tax appeal petition*: Filing fee

(i) Allocation, apportionment, and equalization.....$250.00.

(ii) **True cash or taxable** ~~Taxable~~ value.....$250.00 ~~50.00~~.****

- *Like the flat fee, comfortable with the amount.*

*__If a stipulation is filed instead of a property tax appeal petition and the stipulation is acceptable to the tribunal, the__ ~~The~~ filing fee __shall be $100.00__ ~~for a taxable value appeal is $50.00, unless there is a dispute relative to the value of an addition or a loss, in which case the filing fee is determined by the state equalized value in contention relative to the addition or loss, or both, as provided in paragraph (iii) of this subdivision~~.

- *Good.*

~~(iii) State equalized value in contention*~~ ~~Filing fee**~~
~~$40,000.00 or less.....$ 50.00.~~
~~$40,000.01 to $75,000.00.....$ 75.00.~~
~~$75,000.01 to $150,000.00.....$100.00.~~
~~$150,000.01 to $500,000.00.....$150.00.~~
~~More than $500,000.00..... $250.00.~~

~~*Value in contention is the difference between the state equalized value as determined from the assessment and the state equalized value contended by the petitioner.~~

The filing fee on multiple, **contiguous parcels ~~(contiguous)~~ owned by the same person shall be ~~the filing fee on the parcel that has the largest state equalized value in contention, plus~~ $**125.00** ~~10.00~~ for each additional parcel, not to exceed a total filing fee of $**2,000.00** ~~500.00~~.

- *Need to define "contiguous".*
- *Both the additional parcel and the total fee are too high.*
- *The cap should be $1,250*
- *The cap should be the equivalent of 8 additional parcels.*

(b) Upon the filing of a motion to amend a petition to add a subsequent year in a property tax appeal, the filing fee shall be equal to 50% of the filing fee to file a new petition for that property.

(c)~~(b)~~ Upon the filing of a non-property tax appeal **petition** or a **property tax appeal petition contesting a** special assessment ~~petition~~, the filing fee shall be ~~2% of the difference between the amount of tax as determined in the assessment notice and the amount of the tax as contended by the petitioner, but shall not be less than $50.00 nor more than~~ $250.00. **If a stipulation is filed instead of a non-property tax appeal petition or a property tax appeal petition contesting a special assessment and the stipulation is acceptable to the tribunal, the filing fee shall be $100.00.**

- *TTR 202 dramatically increases the filing fees for motions, the minimum filing fee is now $50 all the way up to $125 for a Motion to Dismiss. This proposed rule seems to turn a blind eye to the fact that half the entities litigating in the Tribunal are government entities and that is counterproductive to charge more for a Motion to Dismiss than is currently charged. Doing so will only keep parties from actually filing the motion and prolong the proceedings. Furthermore, this is contrary to the way the State courts currently handle matters at $20 a motion.*

~~(c) Upon transfer of a proceeding from the small claims~~ Filing fee

~~division to the entire tribunal on a party's or intervenor.....$ 25.00.~~
~~(d) Upon transfer of a cause to the tribunal from any forum.....$ 25.00.~~
(d)~~(e)~~ Upon **the** filing of a motion**, other than a motion for immediate consideration, motion to adjourn, motion to extend time, motion to set aside default or dismissal, motion for summary disposition or partial summary disposition, or motion for reconsideration**.....$ **50.00** ~~25.00~~.
(e) Upon the filing of a motion for immediate consideration…….$100.00.
(f) Upon the filing of a motion to adjourn……$ 75.00.
(g) Upon the filing of a motion to extend time……..$ 75.00.
(h) Upon the filing of a motion to set aside default or dismissal……$125.00.
(i) Upon the filing of a motion for summary disposition or partial summary disposition…….$100.00.
(j) Upon the filing of a motion for reconsideration……..$ 75.00.
(k)~~(f)~~ Upon certification of the record on appeal to the court of appeals.....$**100.00** ~~25.00~~.
(f)~~(g)~~ For copies of **pleadings and other documents** ~~document~~ on file with the tribunal.....$ .50/page.

- ***202. New fee structure; Ouch! Are subdivision appeals being wiped out with this rule?***
- *Motion fees – While this will cut down on the Tribunal's workload, it may further restrict access to the court house. Motion fees in circuit court only $20.00.*
- *Fees – I think the fees for small matters are prohibitive. This would force taxpayers into the small claims process – which, quite frankly, is usually far from satisfactory in more complex cases. I would suggest a smaller fee for smaller appeals up to a certain dollar amount, with the standard fee pertaining to all others.*
- *Consider the Tribunal ordering <u>its</u> costs where the taxpayer has unnecessarily extended, burdened, etc,. the Tribunal.*
- *Should include the statement re that the motion fees are not cumulative (contained in TTR 230(6)) here.*
- *I am comfortable with the fee structure (several comments).*
- *I would reduce the fee for motion to set aside default or dismissal to $75 or $50 (several comments).*
- *Increase the fee for Motions for Immediate Consideration to $125.*
- *Stipulations for Motions to Adjourn or Extend should be higher.*
- *Understand the basis for this is the requirement that Tribunal be funded nearly entirely from fee revenue.*

R 205.1205 Commencement of proceedings.

Rule 205. (1) An appeal, application for review, or any other proceeding is commenced by filing a petition**, case information statement, and appropriate filing fee** with the tribunal within the time periods prescribed by statute. **See R 205.1202 and R 205.1240.** ~~A petition filed in the entire tribunal shall be considered filed by June thirtieth of the tax year involved if it has been received by the tribunal by June thirtieth of the tax year involved or mailed by certified mail addressed to the tribunal on or before June thirtieth of the tax year involved. A petition filed in the small claims division shall be considered filed by June thirtieth of the tax year involved if it has been received by the tribunal by June thirtieth of the tax year involved or~~

~~mailed and postmarked by the United States postal service on or before June thirtieth of the tax year involved.~~

- *205(1) Case info statement.*

(2) Upon the commencement of an appeal or application for review, the tribunal shall enter the proceeding upon the docket and assign a number. The tribunal shall provide petitioner with written notice of the docket number. The parties shall place the docket number on all pleadings, documents, and correspondence thereafter filed in the proceeding.

(3) Petitioner shall serve the petition within 35 days of entry of the notice of the docket number, as provided by R 205.1208.

- *(3) 35 days for service after assignment of a docket no. Current practice is to serve concurrently with filing, prior to docket no. assignment. Is this allowed?*

(4) Petitioner shall, within 35 days of the entry of the notice of docket number, file proof demonstrating service of the petition on the opposing party or parties, as provided by R 205.1208.

(5) Failure to serve the petition and file the proof of service, as required by these rules shall result in dismissal of the proceeding. If an appeal is dismissed for failure to serve the petition and file the proof of service, then the petitioner may file a motion to set aside dismissal within 20 days of the entry of the order of dismissal. See R 205.1247. The motion shall demonstrate the following:

(a) Service of the petition, as required by R 205.1205 and R 205.1208, was, in fact, made.

(b) Proof of service was filed or the failure to file the proof of service is excused for good cause shown.

- *(5) What if service made on the municipality, but served on the wrong school board? Where is the prejudice? Dismissal a harsh remedy, and should not be mandatory, where the opposing party has notice of the proceeding.*
- *Limit dismissal only for failure to serve the taxing unit.*
- *Must the Petitioner also demonstrate a "meritorious claim"?*
- *Tribunal should return to Sua Sponte dismissals of petitions as it would save local taxing units money and time.*

(6)~~(2)~~ A petitioner who files ~~an initial letter of appeal to~~ **a petition with** the tribunal without specifying the division of the tribunal in which the appeal is being filed **shall** ~~will be presumed to have elected to~~ have the matter heard in the small claims division **unless a motion to transfer is filed no less than 28 days before the scheduled hearing and the petitioner pays the entire tribunal filing fee and any costs incurred by the respondent as a result of the transfer**.

~~(3) If a petitioner returns, in a timely manner, an unsigned small claims petition form with a petition electing to have the matter heard in the entire tribunal as provided in R 205.1240, then the petition may be deemed to have been filed in accordance with section 35(2) of the act and, with leave of the tribunal, the matter will proceed in the entire tribunal.~~

- *TTR 205 provides that the Petitioner still has to file a Petition as required by statute, obtain a docket number and then serve the Respondent within 35 days after filing. This may result in petitions not being served on our clients until August.*
- *(6) Election of small claims and transfer. The 28 day rule is only fair if there is more than 28 days notice (say 42 days) of the small claims hearing. Rule also fails to define "costs"*

R 205.1208 Service of **petition** ~~papers~~.

Rule 208. (1) ~~In~~ **A petition commencing a** property tax **appeal** ~~appeals, service by an interested person~~, other than a **special assessment appeal** ~~unit of government~~, **filed by the property owner or the person or entity responsible for paying the property's ad valorem taxes for the tax year or years at issue** shall be ~~deemed proper upon units of government if the petition is~~ served upon the **following officials by certified mail addressed to the officials at their last known address or by personal service:**

(a) The certified assessor or board of assessors of the unit of government making an assessment being appealed~~; upon the~~.

(b) The city clerk, in the case of cities~~; and upon the~~.

(c) The township supervisor or clerk, in the case of townships~~. Service of a petition commencing a proceeding shall be made on the named individuals specified in this subrule by certified mail addressed to the individuals at their last known address or by personal service as provided by rule 2.107 of the Michigan Rules of Court~~.

(2) A petition commencing a property tax appeal, other than a special assessment appeal, filed by the property owner or the person or entity responsible for paying the property's ad valorem taxes for the tax year or years at issue shall be served upon the following officials by first-class mail addressed to the officials at their last known address or by personal service:

(a) The county equalization director for any county affected.

(b) The county clerk for any county affected.

(c) The secretary of the local school board.

(d) The treasurer of the state of Michigan.

(3) ~~In~~ **A petition commencing a** property tax **appeal** ~~appeals~~, **other than a special assessment appeal,** ~~service~~ **filed** by a unit of government~~, if that unit of government has standing to bring the appeal,~~ shall be **served** ~~deemed proper~~ upon **the property owner or** the ~~interested~~ person or **entity responsible for paying the property's ad valorem taxes for the tax year or years at issue** ~~persons if the person or persons are served~~ by certified mail addressed to ~~the person or persons at~~ their last known address or by personal service. ~~as provided by rule 2.107 of the Michigan Rules of Court. A copy of a petition commencing a proceeding shall be mailed or delivered in person to the secretary of the school board in the local school district in which the property is located, the county equalization director, and the county clerk of any county that may be affected.~~

(4) A petition commencing a property tax appeal, other than a special assessment appeal, filed by a unit of government shall be served upon the following officials by first-class mail addressed to the officials at their last known address or by personal service:

(a) The county equalization director for any county affected.

(b) The county clerk for any county affected.

(c) The secretary of the local school board.

(d) The treasurer of the state of Michigan.

(5) A petition commencing a special assessment appeal filed by the property owner or the person or entity responsible for paying the property's ad valorem taxes for the tax year or years at issue shall be served upon the clerk of the unit of government, authority, or body levying the special assessment being appealed by certified mail addressed to that official at his or her last known address or by personal service.

(6)~~(2)~~ ~~In~~ **A petition commencing a** non-property tax **appeal** ~~appeals, service of the petition~~ shall be ~~deemed proper if made~~ **served** upon the ~~state revenue commissioner or upon the~~

~~appropriate official administering the tax being appealed. Service under this subrule shall be made by certified mail~~ following **officials by first-class mail** addressed to the ~~individual named in this subrule at his or her~~ **officials at their** last known address or by personal service ~~as provided by rule 2.107 of the Michigan Rules of Court~~:

(a) The treasurer and the attorney general of the state of Michigan if the tax was levied by the department of treasury.

(b) The clerk of the unit of government if the tax was levied by a local unit of government.

(7) A petition served by a process not provided by this rule shall be deemed properly served if the official or individual upon whom the petition was to be served receives the petition.

- "Properly" is incorrect. Should say " not timely".

~~(3) Except as otherwise required by these rules, all pleadings, motions, orders, decisions, notices, demands, briefs, appearances, or other documents filed with the tribunal relating to a case shall be served concurrently on each of the parties' authorized representatives or, if there is no authorized representative, on the party as provided in R 205.1215(4).~~

~~(4) All other pleadings, documents required to be served may be served by first-class mail or in person as permitted by rule 2.107 of the Michigan Rules of Court.~~

~~(5) Proof of service shall be established by either a written acknowledgment of a receipt of a pleading or other document that is dated and signed by the person authorized under these rules to receive it or by certification stating the facts of service. Failure to make proof of service does not affect the validity of the service.~~

- *TTR 208 only requires that copies of the Petitions be served by first class mail upon the county, county clerk and school board. The assessor, city clerk and township supervisor or clerk still have to be served by certified mail.*
- *208 Who to serve. State Treasurer now a party. Do they have a right to intervene?*
- *Service of Petition -- §208(7) – "Shall be deemed to be properly served" – does this imply timely served as well, even though perhaps not within the otherwise required timeframes?*

R 205.1210 ~~Time for service~~ **Service** of **pleadings and other documents; proof of service** ~~papers~~.

Rule 210. (1) ~~A respondent shall serve and file its answer or take other action as may be permitted by law within 28 days after service of a petition. Failure to serve and file an answer within 28 days after service of a petition may result in the scheduling of a default hearing as provided by R 205.1247.~~ **Except as otherwise required by these rules, all pleadings, motions, briefs, appearances, or other documents filed with the tribunal shall be served concurrently on each authorized representative or, if there is no authorized representative, on each party.**

(2) Except as otherwise required by these rules, all pleadings, motions, briefs, appearances, or other documents filed with the tribunal may be served by first-class mail or in person.

- *When deemed served? Should be determined by postmark?*

(3)~~(2)~~ **Except as otherwise required by these rules, all pleadings, motions, briefs, appearances** ~~An answer, motion~~, or other **documents** ~~document~~ filed or served shall be deemed to be filed or served upon mailing or upon delivery in person~~, as provided by rule 2.107 of the Michigan Rules of Court, within the time fixed for filing or service~~.

(4)~~(3)~~ All pleadings**, motions, briefs, appearances, or** ~~and~~ other documents required to be filed ~~or served~~ on a day during which the offices of the tribunal are not open for business shall be filed on the next business day.

(5) Proof of service shall be established by written acknowledgment of the receipt of a pleading or other document dated and signed by the person authorized under these rules to receive the pleading or other document, by affidavit of the person making the service, or by other proof satisfactory to the tribunal.

- *210 Service of other papers. IS POS signed by an attorney, with bar number who certifies it has been served, adequate under the rule, or do practitioners need to drive their notaries crazy with every filing? If a firm's notary is on vacation, or takes a sick day, a practitioner could be in trouble.*
- *§210 – Proof of Service – why not mention postmark?*

R 205.1215 Appearance and representation**; decorum**.

Rule 215. (1) Authorized representatives may enter an appearance either by subscribing the petition or other document initiating the participation of a party ~~in a proceeding~~ or by filing an appearance ~~in the proceeding~~. ~~See also R 205.1208~~.

(2) The tribunal may require an authorized representative to provide a written statement of authorization signed by the party for whom the representative appears.

(3) An authorized representative ~~may~~ **desiring to** withdraw **his, her, or its appearance, or any party desiring to withdraw the appearance of his, her, or its authorized representative shall file a motion requesting leave to withdraw the appearance** ~~from a proceeding or be substituted for only by order of the tribunal~~. **The motion shall inform the tribunal as to the basis of the withdrawal and whether there is any objection to the motion. The motion shall also inform the tribunal as to the current mailing address and daytime telephone number of the party or parties.**

(4) An authorized representative desiring to substitute his, her, or its appearance for the appearance of a party's current authorized representative may, if there is no opposition to the substitution, file a proposed order for substitution signed by the party, the new authorized representative, and the current authorized representative. There is no fee for the filing of the proposed order.

(5)~~(4)~~ In the absence of an appearance by an authorized representative, a party is deemed to appear for himself, herself, or itself. A corporation, unincorporated association, or unit of government may be represented by an authorized officer. An estate or trust may be represented by a fiduciary. A party shall state in the initial pleading his, her, or its name, address, and telephone number and promptly inform the clerk of the tribunal and all parties of any change in that information.

(6) An authorized representative shall state in the initial pleading or appearance his, her, or its name, address, and telephone number and promptly inform the clerk of the tribunal and all authorized representatives or parties of any change in that information.

(7)~~(5)~~ A ~~party~~ **person** appearing before the tribunal shall ~~conduct himself or herself with decorum.~~ **not do any of the following:**

(a) Seek to influence a member or employee of the tribunal concerning a pending proceeding, except as permitted by these rules or by law.

(b) Communicate with any member or employee of the tribunal concerning a pending proceeding, except as permitted by these rules or by law.

(c) Allude, during a proceeding, to any matter that the person does not reasonably believe is relevant or that is not supported by admissible evidence.

- *215(7)© How do you know whether it is supportable by admissible evidence, if the Tribunal has not ruled upon admissibility yet? Why should this be a breach of decorum, it (sic) the Tribunal needs to see or hear it to anyway, to rule upon its admissibility?*

(d) Engage in discourteous conduct toward the tribunal or any other person appearing before the tribunal.

- *(d) discourteous conduct – heart of the moment; thin line sometimes between advocacy and lack of courtesy. Should calling a ruling unfair be discourteous? 1st amendment & due process problem.*
- *Should civility principles, adopted by USDC ED MICH by (sic) referenced in the rule?*

R 205.1220 Parties**; substitution; intervention or joinder; joint hearings; joinder; consolidation; separate hearings**.

Rule 220. (1) The party who commences a proceeding shall be designated as the petitioner and the adverse party as the respondent.

(2) A proceeding shall be prosecuted by a party or parties in interest or in the name of a party or parties in interest. Misjoinder of parties is not, however, grounds for the dismissal of a proceeding.

(3) A party may be substituted for, added, or dropped by order of the tribunal upon motion of any party or parties in interest or its own initiative at any stage of the proceedings on such terms as are just. The tribunal may also order severance of parties on such terms as are just.

(4)~~(2)~~ Upon a change or transfer of interest, the proceeding may be continued by or against the original party in its original capacity, unless the tribunal directs the person to whom the interest is transferred to be substituted in the proceeding for the original party, joined with the original party, or made a party in another capacity.

(5)~~(3)~~ If proceedings involving a substantial and controlling common question of law or fact are pending before the tribunal, then the tribunal may ~~do any or all of the following:~~

~~(a) Order~~ **order** a joint hearing on any or all matters in issue**;**~~.~~

~~(b) Order a joinder of all parties in accordance with their interests.~~

~~**(b)**(c) Order~~ **order** the proceedings **or portions of the proceedings** consolidated**;**~~.~~

(c)~~(d) Make~~ **or issue such** other orders concerning the proceedings as may tend to avoid unnecessary costs**,** ~~or~~ delay**, or duplication**. **The tribunal may take similar action where proceedings involve different tax liabilities of the same parties, notwithstanding the absence of a common issue.**

(6) The tribunal may order a separate hearing on any claim, defense, issue, or tax liability of any party or parties when separate hearings may assist in a more meaningful presentation of the evidence or a more efficient proceeding. When separate hearings are ordered in a proceeding, the proceeding is concluded by the entry of a final decision only.

~~(4) Parties may be added or dropped by order of the tribunal on its own initiative or on motion of any interested person at any stage of the proceedings and according to terms that are just.~~

- *220(5) & (6) joint hearings. Improvement over old rule.*

R 205.1221. Multi-member panels.

(1) The chair may, upon motion or his or her own initiative, designate a proceeding for determination by 3 or more tribunal members instead of a determination by an individual tribunal member.

- ***Should address two-member panels and how to best address conflicts.***

(2) Members of the panel may be assigned by the chair to hear and determine all or only part of the proceeding. The chair may remove panel members and assign new panel members, as provided by R 205.1140.

(3) The tribunal chair shall designate 1 of the tribunal members serving on the panel as the presiding chief judge of that panel. The presiding chief judge shall be responsible for the conducting of the hearing and the administrative processing of the proceeding.

(4) A decision or order by a majority of the tribunal members serving on the panel shall be the tribunal's decision or order in that proceeding.

(5) If a tribunal member serving on the panel disagrees with the tribunal's decision or order, then that tribunal member shall be given 14 days before the entry of the decision or order within which to prepare a dissenting decision or order for entry and mailing with the tribunal's decision or order.

- *221 Multi-member panels. This rule is needed, and makes sense.*
- *§221 – What if there's a two-member panel – with a split decision? Would the decision of the Chair control? Would the Tribunal appoint a third member, etc.?*

R 205.1222 Amicus curiae.

Rule 222. **(1)** The tribunal may, upon motion, order a person, or, upon motion or its own initiative, order a state or local governmental unit, to appear as amicus curiae or in another capacity as the tribunal deems appropriate.

(2) If an amicus curiae files a brief, then the brief shall be limited to the issues raised by the parties unless otherwise ordered by the tribunal.

(3) An amicus curiae may not participate in oral arguments unless otherwise ordered by the tribunal.

- *§222 – Amicus – when would amicus briefs be expected? Only after hearing? On procedural motions, etc.?*
- *How does an amicus enter? This needs further detail.*

R 205.1225 Pleadings; amended and supplemental pleadings.

Rule 225. (1) ~~There~~ **Pleadings** shall ~~be~~ **consist of** a petition **and case information sheet** and an answer. An application for review or any other pleading initiating a proceeding is deemed to be a petition. ~~A pleading raising an affirmative defense or allegations shall be deemed to be an answer and a responsive pleading is not necessary.~~ Any other pleading is not allowed **unless otherwise ordered by the tribunal**, except that an answer may be made to petitions filed by parties who are later substituted or joined in the proceedings.

- *Should include "affirmative defenses" with the answer.*

(2) A pleading is sufficient if it gives the parties and the tribunal fair notice of the matters in controversy and the basis of the parties' respective positions and may include alternative or inconsistent claims or defenses. A claim by a respondent to increase an assessment shall be pled.

- *Notice pleading. Must the Respondent plead tax increase request in the first responsive pleading?*

- *Take out this is meaningless. Wouldn't all Respondents plead this?*
- *Petitioners should plead any greater decrease than originally asserted.*

(3) Each allegation or assertion of a pleading shall be clear, concise, and direct.

(4)~~(2)~~ A party may amend ~~or supplement its~~ **a** pleading **to include an assessment or portion thereof** as provided by the act ~~or by leave of the tribunal, except that a petition to seek a tax refund may be amended when a tax is paid while the determination of the right to the refund is pending before the tribunal. For purposes of this subrule, a petition is pending before the tribunal until a decision has been entered by the tribunal~~. **A party may amend or supplement a pleading in all other matters by leave of the tribunal. A motion for leave to amend or supplement a pleading shall state the reason or reasons for the amendment or supplement. The amendment or the supplement to the pleading shall not be incorporated in the motion, but rather the party shall file the proposed amended or supplemented pleading with the motion. The proposed amended or supplemented pleading shall comply with the rules governing the form and style of pleadings filed with the tribunal.**

- *Impose a good faith requirement on amendments.*

(5) When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. The tribunal, upon motion, may allow the amendment of pleadings as may be necessary to cause the pleadings to conform to the evidence and to raise these issues, but failure to amend does not affect the result of the hearing on these issues.

- *May the Tribunal increase a tax assessment after hearing, if not pled in initial Answer?*

- *TTR 225 which determines what is considered pleadings does not include affirmative defenses. It should be suggested that affirmative defenses be added. Furthermore, subsection (2) states that a claim by a Respondent to increase an assessment shall be pled. As a matter of procedure, if these Rules are enacted, we should always plead that the assessment should be increased.*
- *225 Pleadings & Amendments. Rule looks satisfactory. May help do away with overly formal pleading requirements, since issues may evolve during the course of litigation.*
- *§225 – Amended Pleadings – Should there be a requirement of good faith, so as to prevent parties from "sandbagging" by inserting amendments at the last minute, such as an amendment to increase the assessed value – which would change the entire nature of the case?*
- *Think about taking out subsection (5).*

R 205.1230 Motions.

Rule 230. (1) All requests to the tribunal **for an order, other than requests made during a hearing,** shall be made by written motion ~~filed with the clerk and accompanied by the appropriate fee. Motions shall be served concurrently by the moving party on all other parties of record and proof of service shall be filed with the clerk.~~ **The motion shall inform the tribunal as to the basis of the request, the relief requested, and whether there is any objection to the motion.** Written opposition, if any, to motions shall be filed within 14 days after service **unless otherwise provided by these rules or ordered by the tribunal**. ~~For purposes of this rule, a stipulation requiring action by the tribunal is treated as a motion.~~

(2) Except for motions and responses in opposition made during a hearing, a proposed order shall be attached to each motion and any response in opposition to the motion.

(3)~~(2)~~ Pleading on motions shall be limited to the motion and a brief in support of the motion and a single response to the motion and a supporting brief. **A brief in support of a motion or response, if any, shall accompany the motion or response.**

(4) Except as permitted by the tribunal, the combined length of any motion and brief, or of a response and brief, may not exceed 20 pages not including attachments and exhibits. A motion and brief, or a response and brief, shall be typed or printed only on 1 side, on 8 ½ by 11-inch paper. The motion and brief, or a response and brief, shall have margins on both sides of each page that are not less than 1 inch wide, and margins on the top and bottom of each page that are not less than ¾ inch wide. Text and footnotes shall appear in consistent typeface not smaller than 12-point type with double spacing between each line of text and single spacing between each line of indented quotations and footnotes. Quotations more than 5 lines shall be set off from the surrounding text and indented.

(5) Motions for leave to file a motion and brief or response and brief in excess of the page limitations of subrule (4) of this rule shall be filed and granted before the filing of the excessive motion and brief or excessive response and brief. Such motions are disfavored and shall be granted only for extraordinary and compelling reasons.

- *This is impossible to meet.*

(6) Multiple motions contained in a single document require a single filing fee. The fee for the filing of multiple motions contained in a single document shall not be less than the largest fee required for the filing of each motion individually. See R 205.1202.

~~(3) The clerk shall submit, in a timely manner, motions and responses to motions to the tribunal for decision, which shall be by written order. Copies of orders on motions shall be mailed to the parties as provided by R 205.1130(2).~~

(7)~~(4)~~ **A party may request oral argument in a motion or a response to a motion. The request for oral argument shall be contained in the caption of the motion or response.** Oral argument ~~is not allowed on motions, except by order of the tribunal~~ **shall, unless otherwise ordered by the tribunal, be limited to 25 minutes – 10 minutes per party and 5 minutes for the presiding tribunal judge. If the requesting party or parties request more time to resolve the issues presented by the motion or response, then the requesting party or parties shall indicate in the motion or response the proposed amount of time needed and specify why that amount is necessary. The extension of time is solely at the discretion of the tribunal. Fees for the transcribing of an oral argument are in addition to and not a substitute for the fee required for the filing of the motion. Such fees shall be paid as ordered by the tribunal.**

- *Take out reference to 5 minutes. Should be left to the Tribunal's discretion.*

(8) Except for motions to adjourn or motions for summary disposition, a motion shall not be filed after the commencement of the hearing unless otherwise ordered by the tribunal.

- *Leave this to Tribunal Member's discretion.*
- *TTR 230 provides that multiple motions contained in a single document require a single filing fee. Subsection (6). However, more troubling with this section is subsection (5) which requires a motion for leave to file a motion in excess of the 20 page limit now imposed by the Rule. It states that a motion for leave to file a response and brief in excess of the page limitation has to be filed before the filing of the response or the motion. However, with timing issues with the Tribunal, it is unlikely the Tribunal will rule on this motion before the response or the motion actually is filed. Thereby making the subsection essentially useless. Subsection (8) of TTR 230 also provides that except for motions to*

adjourn or for summary disposition, no motion may be filed after commencement of a hearing unless otherwise ordered by the Tribunal. This begs the question of how do you get the order without a motion.

- *230 Motions Requirements similar to MCR2. Reasonable rule, especially when combined with proposed rule 231, assuming that the time limits contained in 2.116 are incorporated for Summary Disposition.*
- *§230 – Motions. I strongly disagree with the Tribunal's position that no replies will be permitted. This encourages the non-moving party to take, shall we say, "poetic license" with the facts and/or arguments/cases. A reply would keep the response honest. In my experience this happens about 50% of the time, and it is not "picked up" by the Tribunal more than 50% of the time.*
- *Further, what happens if one requests additional pages for a reply by motion, but does not hear from the Tribunal until 14 days has expired? With respect to subsection (8) – what happens if things are encountered during the course of a trial, during adjournments, for example, which would assist in resolving the matter? Presumably the prohibition against filing a motion would not apply to verbal motions. How does one obtain permission from the Tribunal to file a motion during the trial, does this require a separate motion for permission, then the motion itself and, if so, what time period relates to the obligation to respond to the initial motion? I believe I would delete subsection (8), and leave this to the discretion of the Judge at prehearing and/or at any point during the trial.*

R 205.1231 Motions for summary judgment.

Rule 231. A party may file a motion for summary judgment on all or part of a claim, as provided by Rule 2.116 of the Michigan court rules.

- *Summary Disposition now the same as MCR 2.116.*
- *Gives parties a reasonable time to answer summary disposition motion, if time periods adopted. However, this is somewhat ambiguous, as there is no hearing date set with the Motion as in circuit court, so the non-moving party may not know when its written response is due. Perhaps a set time period to respond (21 or 28 days) should be allowed, as the moving party could be working up its Motion & briefs for weeks!*

R 205.1232 Motions to adjourn; motions to extend due dates.

Rule 232. (1) A party may file a motion to adjourn any proceeding scheduled by the tribunal. The motion shall inform the tribunal of the basis for the adjournment, whether other adjournments have been granted and, if so, the number granted, whether there is any objection to the motion, and proposed dates for the rescheduling of the proceeding. The motion's caption shall specify whether the motion is the first or a later request, for example, "Petitioner's Motion for Second Adjournment." A party filing a motion to adjourn is required to appear at the scheduled proceeding for which adjournment is requested unless otherwise ordered by the tribunal.

(2) In granting a motion to adjourn, the tribunal may impose conditions on the requesting party and parties and award costs to the non-requesting party or parties. If an adjournment is subject to the payment of costs, the adjournment may be vacated if non-payment is shown by affidavit.

(3) A party may file a motion to extend a due date provided by these rules or by order of the tribunal. The motion shall inform the tribunal of the basis for the extension, whether other extensions have been granted and, if so, the number granted, whether there is any objection to the motion, and proposed alternative due dates. The motion's caption shall specify whether the motion is the first or a later request, for example, "Petitioner's Motion for Third Extension." Such motions are disfavored and shall be granted based on a demonstration of extenuating circumstances only.

- *Motions to adjourn. Combined with higher motion fees, this is (sic) may be somewhat harsh. Are any guidelines for automatic adjournment remaining?*

Rule 205.1233. Motions for reconsideration.

Rule 233. (1) Any decision or order entered by the tribunal may be reconsidered by the tribunal upon motion or its own initiative.

- *Specify the time period.*

(2) A party may move for reconsideration of any decision or order entered by the tribunal. Such motions shall be filed within 20 days of the entry of the decision or order sought to be reconsidered. A response to the motion may be filed within 14 days as provided in R 205.1230.

(3) Generally, and without restricting the discretion of the tribunal, a motion for reconsideration that merely presents the same issues ruled on by the tribunal, either expressly or by reasonable implication, shall not be granted. The moving party shall demonstrate a palpable error by which the tribunal and the parties have been misled and show that a different disposition of the decision or order shall result from correction of that error.

(4) The filing of a motion for reconsideration tolls the time period for the filing of an appeal from the decision or order of the tribunal sought to be reconsidered.

(5) An appeal from a decision or denial of a motion for reconsideration shall be taken in accordance with section 53 of the act and the Michigan court rules.

- *TTR 233 changes the filing deadline for motions for reconsideration of 20 days.*
- *Reconsideration. Why 20 days, rather than 21?*
- *during what timeframe might the Tribunal reconsider on its own initiative?*
- *Was this change to comport with the Tribunal Act's statement of 20 days? If so change the Act to 21 days.*

R 205.1234 Motions for immediate consideration.

Rule 234. (1) A party may file a motion requesting the tribunal to give immediate consideration to another motion. The motion for immediate consideration shall inform the tribunal as to why immediate consideration is required.

(2) If the motion for immediate consideration informs the tribunal that the non-moving party or parties have received notice of the motion for immediate consideration, the name of the person or persons notified, and whether the non-moving party or parties agree or oppose the motion for immediate consideration, then the opposing party or parties may file written opposition to the motions, if any, within 7 days after service of the motion for immediate consideration.

(3) If the motion fails to inform the tribunal that the non-moving party or parties have received notice of the motion for immediate consideration, the name of the person or

persons notified, or whether the non-moving party or parties agree or oppose the motion for immediate consideration, then the opposing party or parties may file written opposition to the motions, if any, within 14 days after service of the motion for immediate consideration.

(4) If the tribunal determines that immediate consideration of either motion is warranted, the tribunal may render an order without waiting for a response from the non-moving party or parties.

- *Consider addressing the Motion for Immediate Consideration separately from the substantive motion. This would allow the Tribunal to quickly respond to the parties and advise them as to how much time the responding party would have to file a response.*
- *TTR 234 incorporates the Tribunal Notice on motions for immediate consideration.*
- *Require that service of motions for immediate consideration be made by hand delivery, fax or electronically.*
- *234 Immediate consideration. Same as current practice in Tribunal Notice?*

R 205.1235 ~~General rules~~ **Form** of pleading.

Rule 235. **(1) This rule applies to all pleadings, motions, briefs, appearances, or other documents provided for by these rules. In this rule, the term "document" refers to all such papers.**

- *You are referring to documents filed with the Tribunal, correct?*

(2)~~(1)~~ All documents filed with the tribunal shall contain all of the following information:

(a) The caption "Michigan Tax Tribunal."

(b) The title of the case.

(c) The docket number of the case after it is assigned by the tribunal.

(d) A designation showing the nature of the document.

(3) In the petition, the title of the case shall include the names of all parties, but shall not include as a party-petitioner the name of any person other than the person or persons by or on whose behalf the petition is filed. In other documents, it is sufficient to state the name of the first party with an appropriate indication of other parties.

(**4) All documents filed with the tribunal shall be clear and legible. The documents shall be typed or printed on 1 side, on 8 ½ by 11-inch paper. All such documents shall have margins on both sides of each page that are not less than 1 inch wide, and margins on the top and bottom of each page that are not less than ¾ inch wide. Text and footnotes shall appear in consistent typeface not smaller than 12-point type with double spacing between each line of text and single spacing between each line of indented quotations and footnotes. Quotations more than 5 lines shall be set off from the surrounding text and indented. These requirements do not apply to forms approved by the tribunal and attachments and exhibits. Parties are, however, encouraged to reduce or enlarge attachments and exhibits to 8 ½ by 11 inches, if practical.**

- *(4) typo. Should be **NO** less than ¾ inch. Rule is reasonable.*

(5)~~(2)~~ The original **and a judge's copy** of all **documents** ~~pleadings, motions, and briefs~~ shall be filed with the tribunal. **The judge's copy shall be clearly marked "JUDGE'S COPY" on the cover sheet. The notation may be handwritten.**

- *(5) Is Judge's copy now required of initial pleadings?*

- *TTR 235 provides the general court rule regarding document requirements, 8 ½ x 11 inch paper, 12 point type, etc.*
- *Should there not be a signature block, showing the name, address, telephone number, and party represented, of the person responsible for the document being filed?*

R205.1237. Signatures of parties, authorized representatives, and expert witnesses.

Rule 237. (1) This rule applies to all pleadings, motions, briefs, appearances, or other documents provided for by these rules. In this rule, the term "document" refers to all such papers.

(2) The original signature, either of the party or, if the party is represented, the party's authorized representative, shall be subscribed in writing to the original of every document filed with the tribunal, unless otherwise directed by the tribunal. Documents may also be signed electronically when a method for such signatures is approved by the tribunal. Where there is more than 1 authorized representative of record, the signature of only 1 is required. Except when otherwise required by these rules or the tribunal, documents do not need to be verified or accompanied by an affidavit.

(3) The signature of a party, an authorized representative, or expert witness constitutes a certificate by the signer that the signer has read the document; that, to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. The signature of an authorized representative also constitutes a representation by the authorized representative that the authorized representative is authorized to represent the party or parties on whose behalf the document is filed.

(4) If a document is not signed or signed in violation of subrule (3) of this rule, it shall be stricken, unless it is signed promptly, after the omission is called to the attention of the party, parties, or authorized representative submitting the document.

(5) If a document is signed in violation of this rule, the tribunal, upon motion or its own initiative, may impose upon the party or parties and the authorized representative an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable costs incurred because of the filing of the document, including the reasonable fees of the opposing party or parties' authorized representative, if any.

- *TTR 237 is the rule regarding the signature of the party and that the signature of the party is an attestment to the fact that the document is not being interposed for improper purposes, a/k/a MCR 2.114.*
- *237 Signature and Sanctions. Tracks MCR 2.114. However, keep in mind that there are strict deadlines for filing all property tax petitioner; Attorney cannot perform a thorough investigation on each and every item, and must rely upon the client for its initial petition. A representative should not be hanged for the sins of its client, to whom he has a duty to zealously represent. There should be a finding of intentional misconduct by the signatory, before sanctions are imposed.*
- *§237 – Is the reference to an "appropriate sanction" enough for subsection (5) – when there has been a clear and intentional abuse by a party – why not indicate could even include default and/or dismissal in appropriate cases?*

R 205.1240 Petitions; **case information statements**.

Rule 240. **(1) A petition shall comply with these rules.**

(2) A case information statement in a form specified by the tribunal shall be attached to the face of the petition.

(3)~~(1)~~ A petition shall contain a statement of facts, without repetition, upon which the petitioner relies in making **his, her, or** its claim for relief. The statement shall be made in separately designated paragraphs, the contents of each of which shall be limited, as far as practicable, to a statement of a single fact **or a single set of circumstances**. Each claim shall be stated separately when separation facilitates the clear presentation of the matters set forth. ~~A petition shall not cover more than 1 assessed parcel, except as follows:~~

~~(a) A single petition involving real property may cover more than 1 assessed parcel if the real property is contiguous and within a single assessing unit.~~

~~(b) A single petition involving personal property may cover personal property in more than 1 location if the property is assessed as 1 assessment and is located within a single assessing unit.~~

~~(c) A single petition may include both real and personal property.~~

(4) A petition shall contain a demand for the relief sought. Relief in the alternative or relief of several different types may be demanded.

(5)~~(2)~~ Each petition shall contain all of the following information:

(a) The petitioner's name and legal residence or, in the case of a corporation, its principal office or place of business.

(b) The name of the opposing party or parties.

(c) ~~A description of the matter in controversy, including the type of tax, the year or years involved, and, in a~~ **In** property tax appeal, ~~all of~~ the following information:

(i) A statement of the amount in dispute, which shall include the property's state equalized, assessed, and taxable values as confirmed by the local board of review, the petitioner's contention of the property's true cash, state equalized, and taxable values, and the differences between the values as confirmed by the local board of review and the petitioner's contentions. The statement shall also indicate whether there is a dispute relative to the calculation of the property's taxable value and, if so, whether the dispute relates to the value of an addition or loss to the property. If there is a dispute relative to the value of an addition or loss to the property, then the statement shall include the state equalized value of the addition or loss as confirmed by the local board of review, the petitioner's contentions of the true cash and state equalized value of the addition or loss, and the difference between the values as confirmed by the local board of review and the petitioner's contentions.

- *Allow Petitioner to plead good faith estimates of value or tax contentions. Most Petitioners do not know the values contended until after the appraisal. Not meaningful at this stage. (Several comments and no disagreements.)*
- *If you are eliminating graduated fees why require this?*
- *Local jurisdictions may not capture the "state equalized value of an addition or loss".*

(ii)~~(i)~~ The ~~present~~ **actual specific** use of the property, the **proposed specific** use ~~for which~~ **of** the property ~~was designed~~, **if different than its actual specific use,** and the classification of property.

(iii) A statement as to whether the matter in controversy has been protested, in a timely manner, to the local board of review or, if applicable, at the hearing held to confirm the special assessment roll, and the date of the protest. If the assessment was not protested, then the

statement shall inform the tribunal as to the actual date the taxpayer received notice of the assessment or, if applicable, the specific error or mistake of fact made by the assessing officer and taxpayer in establishing the assessment at issue.

- *(d)(ii) Final notice of assessment requirement. This is onerous, because petitioners often do not have them, and information is then taken from the Respondent's assessor, or web site. Also, proposed specific use requirement in initial petition may be premature, before appraisal is written.*
- *Most respondents do not save copies of final notice of assessment --only smaller townships.*

(iii) The petition requirements set forth here seem inapposite to appeals of STC decisions. Adding date of STC requirement in lieu of other dates would be appropriate.

(iv) The name of the local school district, intermediate school district, and community college, if any.

(v)~~(ii)~~ Whether the matter involves any of the following:

(A) Valuation.

(B) Assessment.

(C) Taxable value.

(D) Uniformity.

(E) Exemption.

(F) A combination of the areas specified in this paragraph.

(vi)~~(iii)~~ For multifamily residential property, whether the property is subject to governmental regulatory agreements and a subsidy and the type of subsidy involved.

(d) ~~A statement of the amount in dispute, which shall include the following information, as applicable:~~

~~(i) In property tax appeals requiring the determination of a property's taxable value through application of a fraction, the numerator of which is the state equalized value for the current year, minus additions, and the denominator of which is the state equalized value for the immediately preceding year, minus losses, a statement indicating whether there is a dispute relative to the value of an addition or a loss.~~

~~(ii) In taxable value appeals, a statement indicating whether there is a dispute relative to the value of an addition or a loss.~~

~~(iii)~~ In non-property tax appeals**, the following information:**

- *This is in the wrong place. Should follow the discussion of contiguous property.*

(i) ~~, a~~ **A** statement of the **type of tax in dispute, the year or years involved, and the amount in dispute, which shall include the amount of tax, interest, and penalties being levied, the petitioner's contentions of the amount of tax, interest, and penalties that should be levied, and the difference between the amounts being levied and the petitioner's contentions. The statement shall also indicate the** portion of the tax admitted to be correct, if any**.**

(ii) ~~, and a~~ **A** copy of the **final notice of** assessment or other notice **shall be** attached to the petition.

~~(e) In assessment, valuation, or exemption appeals, a statement as to whether the matter in controversy has been protested, in a timely manner, to the local board of review, the date of the protest, and, if applicable, the date of receipt of the disputed tax bill.~~

~~(f) A clear and concise statement of the facts upon which the petitioner relies, except for facts that the opposing party has the burden of proving.~~

~~(g) The relief sought.~~

~~(h) The signature of the petitioner or its authorized representative.~~

(6) A petition shall not include more than 1 assessed parcel, except as follows:

(a) A single petition involving real property may include up to 15 parcels of real property if the real property is contiguous and within a single assessing unit.

- *15 parcel limit does not make sense except as a means of streamlining the Tribunal's work. I would take it out. Wouldn't the Tribunal consolidate anyway?*
- *Tribunal needs to define "contiguous".*
- *Adopt the "contiguous" definition used with homesteads.*
- *Fine with the requirement that they be within the a single assessing unit (several comments.) Fair.*

(b) A single petition involving personal property may include up to 15 parcels of personal property if the personal property is located at a single location within a single assessing unit.

- *If the local unit permits taxpayers to file a personal property statement with all parcels in the single taxing unit then this should be acceptable to for filing in the Tribunal.*
- *Taxpayer's filing a personal property statement for all parcels in a single taxing unit should break out the property by location. Otherwise no one will know what is being appealed. Taxpayers should identify the property, not merely rely on allocated values.*
- *If the local unit taxes based on allocation (a personal property statement filed in a single assessing unit, the local unit has the burden of proving location.*

(c) A single petition may include both real and personal property parcels up to 15 parcels of property if the real property parcels are contiguous and the personal property parcels are located on the real property parcels.

- *Contiguous appeals – Should be a mechanism for Taxable Value appeals of subdivisions that does not require contiguity, because there is always a problem with parcels being sold off, rendering parcels non-contiguous, while the issue for each parcel remains identical. This requirement is pointless; increases the cost of litigation, and will allow respondents to continue to bombard the tribunal with motions for dismissal, etc. when lots are sold.*
- *Allow subdivision appeals to include subsequent years if in those years parcels have been sold off and portions of the remaining parcels are no longer contiguous.*
- *Require personal property to be filed separately.*

(7) If a petition includes more than 1 parcel of property, the petition shall be dismissed if any of the following circumstances exist:

- *Disagree. Should only result in default.(Several comments) Who would issue default, a tribunal member or a staff person?*

(a) If the parcels of property are parcels of real property and 1 or more of the parcels are not contiguous.

- *Need a definition of "contiguous".*

(b) If the parcels of property are parcels of personal property and 1 or more of the parcels are not located in a single location or located on the real property parcels under appeal.

- *This seems okay. At some point, taxpayers must specifically identify the property and its value even if they allocated the value across a taxing jurisdiction when they filed personal property statements.*

- *If the local jurisdiction accepted personal property statements by taxing jurisdiction rather than by specific real property parcel, then the Tribunal should accept filing on the same basis.*

(c) If the parcels of property are parcels of real or personal property and 1 or more parcels are not located within a single assessing unit.

- *Same comments received above.*

(d) The petition includes more than 15 parcels.

- *General disagreement with this limitation unless it address a Tribunal issue.*

(8) To set aside a dismissal under subrule (7) of this rule, the petitioner shall file new petitions in compliance with this rule, a motion to set aside dismissal showing good cause, and an affidavit of facts showing a meritorious claim. See R 205.1247.

- *General agreement that the remedy should be default.*
- *Should be clear that remedy applies only to nonconforming parcels but does not affect the validity of the remainder of the petition (i.e. the parcels are contiguous).*

(9)~~(3)~~ In equalization, allocation, and apportionment appeals, the petition shall be sworn to and be in compliance with applicable statutes.

(10) The tribunal may specify a petition form containing the requirements provided by this rule, the completion of this petition form shall be deemed to conform to the requirements and purposes of this rule.

- *TTR 240 limits Petitions to 15 contiguous parcels or 15 personal property parcels.*
- *240 Form of petition. Petitions will now be much more specialized and detailed. This will make the filing of petitions more difficult. Will leave to amend be liberally granted?*
- *§240 – Statement of the amount in dispute, etc. Will this be a meaningless statement, as in past practice, where the petitioner has not yet acquired an appraisal and really has no idea as to what the appraiser's TCV conclusion should be? This is a serious matter, because respondent's do not know what they are defending against, until well in to the proceeding, indeed not until the exchange of appraisals ahs taken place. This deprives respondents of the opportunity to evaluate the case, the amount at issue, etc., in determining what is to be spent on an appraisal and/or whether special counsel should be hired. I would recommend a procedure under which some additional certainty is injected into parties' claims.*

R 205.1245 Answers.

Rule 245. (1) **An answer shall comply with these rules.**

(2) The respondent shall have 28 days from the date of service of the petition within which to file an answer or ~~other~~ responsive **motion** ~~pleading~~. **The failure** ~~Failure~~ to file an answer **or responsive motion** within **the** 28**-day period** ~~days~~ **shall result in the automatic placement of respondent in default and** may**, if the respondent fails to cure the default by filing an answer or responsive motion within 20 days from the date the answer or responsive motion was originally required to be filed under this rule,** result in the scheduling of a default hearing **or entry of default judgment,** as provided **by these rules** ~~in R 205.1247~~. **A motion to set aside default is required to set aside the automatic default provided in this subrule. See R 205.1247. The motion shall demonstrate the following:**

(a) Service of the answer or responsive motion, as required by this rule and R 205.1208, was, in fact, made.

(b) Proof of service was filed or the failure to file the proof of service is excused for good cause shown.

(3)~~(2)~~ The answer shall be written so that it will fully advise the opposing party and the tribunal of the nature of the defense**.** ~~and shall contain~~ **The answer shall state, in separately numbered paragraphs corresponding with the numbered paragraphs in the petition, either an explicit** ~~a specific~~ admission or denial of each ~~material~~ allegation in the petition. **Each denial shall state the substance on which the respondent will rely to support the denial.** If the respondent **lacks** ~~is without~~ knowledge or information sufficient to form a belief as to the truth of an allegation, then the answer shall so state and the statement shall have the effect of a denial. If the respondent intends to qualify or to deny only a part of an allegation, then the answer shall specify so much of the allegation as is true and shall qualify or deny only the remainder. In addition, the answer shall contain a clear and concise statement of every ground on which the respondent ~~relies and~~ has the burden of proof. ~~Paragraphs of the answer shall be designated to correspond to paragraphs of the petition to which they relate.~~

(4) Allegations or assertions in a pleading that require a responsive pleading are admitted if not denied in the responsive pleading. Allegations or assertions in a pleading that do not require a responsive pleading are taken as denied.

(5)~~(3)~~ An answer may assert as many defenses as the respondent may have against an opposing party. **All statements made in support of a defense shall be made in separately designated paragraphs, the contents of each of which shall be limited, as far as practicable, to a statement of a single fact or single set of circumstances. Each defense shall be stated separately when separation facilitates the clear presentation of the matters set forth.** A defense is not waived by being joined with 1 or more other defenses. All defenses not asserted in either the answer or by appropriate motion are waived, except for the following defenses:

(a) Lack of jurisdiction.

(b) Failure to state a claim upon which relief can be granted.

(6)~~(4)~~ In a special assessment appeal, the answer shall specify the statutory authority under which the special assessment district was created.

(7) The tribunal may specify an answer form containing these requirements, the completion of which shall be deemed to conform to the requirements and purposes of this rule.

- *TTR 245 provides for an automatic default of a Respondent for failing to answer a Petition within 28 days after service. It is now the responsibility of the Respondent to not only file the answer but also a motion to set aside the default, which under the new schedule would be $125.*
- *The time period to answer should be longer.*
- *Automatic default language is inconsistent. On the one hand, the rule states that the default is automatic and on the other the rule states that the default "may" result in a default hearing. Does not sound automatic. Should not be automatic.*
- *245 Answers. Should entry of default be mandatory, rather than discretionary? Is the Tribunal going to adopt Michigan common law standards for setting aside defaults for lack of the filing of an Answer? See Alken-Ziegler Inc. v. Waterbury Headers Corp., 461 Mich 219; 600 NW2d 638 (1999).*
- *Suggest that the Tribunal issue a default and allow the respondent to cure.*
- *§245 – What about the Department's practice of denying all of the taxpayers' averments, simply because the Assistant A.G. has not yet had or taken an opportunity to study the*

Department's files? A denial, or the refusal to admit because of lack of information, which it turns out what inappropriate in this circumstance – should elicit a penalty, perhaps even costs. This is SOP and causes a great deal of additional delay, discovery, etc.

- *Affirmative defenses – does the Tribunal really want to go back to the old approach, where such defenses not pled are deemed to have been waived, notwithstanding more current practice permitting a party by motion to amend to add such a defense – at the discretion of the Tribunal?*

R 205.1247 Defaults; **defects** ~~"default hearing" defined~~; dismissals; transfers.

Rule 247. (1) If a party has failed to **pay the fee required for the filing of a petition or motion, the office of the chief clerk may defect the party for failing to pay a fee required for the filing of the petition or motion. The defected petition or motion shall not be accepted for filing and no action shall be taken on the defected petition or motion until the defect is cured. If a petition or motion is defected for a party's failure to pay a fee, then the petition or motion shall be considered filed on the date the required filing fee is filed.**

(2) If the notice of defect is not cured less than 20 days from the issuance of the notice of defect, then the petition or motion will be returned to the petitioner or moving party.

- *248 Defaults. (2) The Tribunal will be dismissing cases quicker, and the standard for doing so is rather broad. Case law has held that a hearing should be held, and lesser sanctions considered if a rule is not complied with. Also, per Stevens v. Bangor Twp, prejudice needs to be found before dismissal is appropriate. Is the Tribunal doing away with those safeguards in the name of efficiency?*

(3) The office of the chief clerk may default parties only for submitting a fee in an amount less than the amount required by these rules for the filing of a petition or motion, for certification of the record on appeal to the court of appeals, or for copies of pleadings and other documents and for failing to properly sign a petition or answer.

- *Like the limitation on "system defaults". All defaults should be issued by a Tribunal Member.*
- *Should also allow Tribunal Members to issue defects.*

(4) Tribunal members may, upon motion or their own initiative, default a party that has failed to plead, appear, or otherwise proceed as provided by these rules or as required by **an order of** the tribunal~~, then the party may be held in default by the tribunal on motion of another party or on the initiative of the tribunal~~. **A motion to set aside default is required for a default entered by a tribunal member or members unless otherwise provided by this rule or as ordered by the tribunal member or members** ~~A party placed in default shall cure the default as provided by the order placing the party in default and file a motion to set aside the default accompanied by the appropriate fee within 21 days of the entry of the order placing the party in default or as otherwise ordered by the tribunal. Failure to comply with an order of default may result in the dismissal of the case or the scheduling of a default hearing as provided in this rule.~~

~~(2) For purposes of this rule, "default hearing" means a hearing at which the defaulted party is precluded from presenting any testimony or submitting any evidence not submitted to the tribunal before the entry of the order placing the party in default and may not, unless otherwise ordered by the tribunal, examine the other party's witnesses.~~

~~(3) In a property tax appeal, a proceeding shall be dismissed by the tribunal upon motion filed by the petitioner before the time provided in R 205.1250 for conducting a counsel conference has~~

~~expired. In a non-property tax appeal, a proceeding shall be dismissed by the tribunal upon motion filed by the petitioner before the first responsive pleading has been filed with the tribunal. Once the time provided in R 205.1250 for conducting a counsel conference has expired in a property tax appeal or the first responsive pleading has been filed with the tribunal in a non-property tax appeal, the tribunal shall dismiss the case upon motion filed by petitioner only if the other party or parties do not object to the dismissal.~~

(5)~~(4)~~ **If a party or parties fail to timely cure a default entered by a tribunal member or members, the tribunal member or members may enter a decision against the defaulted party or impose such terms and conditions as the tribunal member or members may deem just, including an order finding that designated facts are taken as established, an order prohibiting a party from introducing evidence, an order striking pleadings or parts of pleadings, an order dismissing claims or defenses, an order staying further proceedings, or an order dismissing the proceeding or a part of it. The tribunal member or members may conduct a hearing to determine the decision to be entered, the terms and conditions to be imposed, or the truth of any matter. A decision rendered as a result of a default shall operate as adjudication on the merits.**

- *This is an improvement. Provides more options that are targeted to the error/default and do not result in a dismissal of the entire case.*
- *Fair to both parties.*

(6) A decision rendered as a result of a default or dismissal, other than a dismissal for lack of jurisdiction, shall operate as adjudication on the merits.

(7) For reasons deemed sufficient by the tribunal, upon ~~Upon~~ motion made within 20 ~~21~~ days of the entry of the order **sought to be set aside, the tribunal** ~~as provided by R 205.1288, an order of dismissal~~ may ~~be~~ set aside **a default, dismissal, or decision rendered thereon** ~~by the tribunal for reasons it deems sufficient~~. **A motion to set aside a default, dismissal, or decision rendered thereon, except when grounded upon lack of jurisdiction, shall be granted only if the action causing the default or dismissal has been cured, good cause is shown, and an affidavit of facts showing a meritorious claim or defense is filed. A stipulation for entry of consent judgment to resolve a proceeding shall be considered a motion to set aside a default, dismissal, or decision rendered thereon. A stipulation does not require a showing of good cause or an affidavit of facts showing a meritorious claim or defense. If the stipulation is not accepted by the tribunal, the tribunal shall enter an order informing the parties why the stipulation was not accepted and giving the defaulted party or parties an additional amount of time within which to set aside the default, dismissal, or decision rendered thereon.**

- *TTR 247(7) also now requires an affidavit of facts showing a meritorious claim or defense to be filed along with a motion to set aside default.*
- *Allows settlement as a response -- consistent with the Tribunal Notice.*

(8)~~(5) By stipulation of the parties, or by a petitioner's motion and notice to the adverse party, the tribunal~~ **Tribunal members** may**, upon motion or their own initiative,** transfer a ~~matter~~ **proceeding** to the small claims division by order. **A motion for transfer shall inform the tribunal of the basis for the transfer and whether there is any objection to the motion.**

- *TTR 247 now provides that a party may be put in default for submitting a fee in an amount less than required by the Rules for the filing of a Petition or motion. Furthermore, subsection (5) now provides for something other than a dismissal or default hearing and provides the Tribunal with more latitude in determining what to do when a*

party has been defaulted including the dismissal of claims or defenses, the striking of pleadings and prohibiting a party from entering evidence. This could be a good change.

- *§247 – Defaults – it would be helpful if we had some indication as to whether, if a default hearing is held, cross-examination will be permitted by the defaulted party and/or defaulted party will be permitted to file briefs and/or to offer witnesses, etc. The Tribunal's practices in this regard have been varied in the past.*
- *Tribunal should not permit cross-examination at default hearings (several comments.)*

R 205.1249~~ Equalization, allocation, apportionment, and non-property tax appeals;~~ **Rescinded** ~~applicability of discovery procedures and counsel conference requirement.~~

~~Rule 249. (1) For equalization, allocation, and apportionment appeals, the prehearing and discovery procedures fixed by R 205.1250 to R 205.1270 do not apply, unless otherwise ordered by the tribunal.~~

~~(2) In the case of non-property tax appeals, the counsel conference requirement fixed by R 205.1250 does not apply, unless otherwise ordered by the tribunal.~~

R 205.1250 ~~Counsel~~ **Case management** ~~conference~~ **report; scheduling order**.

Rule 250. (1) ~~In all proceedings, except as provided in R 205.1249, the petitioner or representative~~ **The parties** shall**, within 28 days after the date the answer is due to be filed or as otherwise ordered by the tribunal, file** ~~arrange for~~ a **joint case management report or separate case management reports** ~~conference~~**. The case management report or reports shall be on a form approved by the tribunal and shall include, in the joint case management report, a stipulated proposed scheduling order for the further processing of the proceeding or, in the separate case management reports, proposed scheduling orders for the further processing of the proceeding with an explanation as to why that party was unable to stipulate to each scheduling date proposed by the opposing party or** ~~with all other~~ parties ~~or representatives for the following purposes:~~**.**

~~(a) To discuss the possibility of settlement. In a property tax appeal, the petitioner and respondent shall each express a good faith estimate of the true cash value of the subject property.~~

~~(b) To stipulate to the admissibility of evidence to the fullest extent to which complete or qualified agreement can be reached, including all material facts that are not, or fairly should not be, in dispute.~~

~~(c) To identify, for purposes of discovery, all discoverable evidence or documents known to be in the possession or control of the other party, which shall be specifically listed in the summary required by this rule.~~

~~(d) To consider all other matters that may aid in the disposition of the proceeding.~~

(2) ~~The conference shall be held within 77 days after the filing of the initial petition requiring service upon the opposing party or parties pursuant to R 205.1208 at a time and place mutually agreed to or, if an agreement cannot be reached, fixed by order of the tribunal.~~ **A party that fails to timely file a case management report, as required by this rule, shall be precluded from conducting discovery until the noncompliance is cured and that party obtains by order, upon motion duly filed, the tribunal's leave to conduct discovery. A party's non-compliance does not alter or constitute good cause for altering that party's obligations under these rules or the due dates for fulfillment of those obligations**.

(3) ~~The petitioner shall prepare a summary of the results of the conference that shall be served upon all other parties and, together with proof of service, filed with the clerk within 14 days after~~

~~the conference. Any objections to the summary shall be filed with the clerk within 14 days after the filing of the summary.~~ **Upon the filing of a joint case management report or separate case management reports, the tribunal shall do 1 of the following:**

(a) Enter the stipulated proposed scheduling order or the proposed scheduling order offered by 1 of the parties as the scheduling order for the further processing of the proceeding.

(b) Establish scheduling dates and enter a scheduling order for the further processing of the proceeding.

(c) Conduct a scheduling conference to establish scheduling dates and enter a scheduling order for the further processing of the proceeding.

- *TTR 250 requires the parties, within 28 days after the date the answer is due to be filed to file a joint case management report or separate case management reports. This will essentially double our work and require us to deal with Petitioner's Representatives when we are just trying to get our answers in. This will be unreasonably burdensome and difficult for our assessors to handle. Further, if we fail to file a case management report stipulated to or with a statement stating why we can't stipulate to facts in the case management report, we will not be allowed to conduct discovery until we have filed a motion for leave to conduct discovery.*
- *Extend the time from 28 days to 90 days.*
- *Extend the time from 28 days to 120 days. The 60 day period for counsel conferences were inconsequential because they were not very meaningful to anyone.*
- *250 Case management report. An upgrade over counsel conferences, which were often useless. (2) While the sanction looks appropriate, who gets the sanction, when the requirement for the report is that it be a joint report?*

R 205.1252 **Expert witnesses; valuation disclosures; written summaries** ~~Valuation disclosure; witness list~~.

Rule 252. (1) A ~~party's~~ **party intending to rely, in whole or in part, upon the testimony of an expert witness to establish the value of property in a property tax appeal shall file a** valuation disclosure ~~in a property tax appeal~~ **prepared for that party by that expert witness.**

(2) A party intending to rely, in whole or in part, upon the testimony of an expert witness for any other reason shall file a written summary of that witness' expert opinion.

(3) Failure to file and serve a valuation disclosure or written summary as ordered by ~~shall be filed with~~ the tribunal **shall preclude their admission into evidence unless otherwise ordered** ~~and exchanged with the opposing party as provided~~ by ~~order of~~ the tribunal. However, a party may, if it has reason to believe that the opposing party **or parties** may not ~~exchange its~~ **file and serve their** valuation disclosure **or written summary** as ~~provided~~ **ordered** by ~~order of~~ the tribunal, submit its valuation disclosure **or written summary** to the tribunal together with a motion and appropriate filing fee requesting the tribunal's leave to withhold ~~and place a protective order on the~~ **its** valuation disclosure **or written summary from the opposing party or parties** until ~~the opposing party actually exchanges its~~ **their** valuation disclosure **or written summary is served on that** ~~with the~~ party.

(4) A valuation disclosure and written statement filed and served under this rule may not be supplemented unless permitted by the tribunal for good cause shown.

- *252 Experts, valuation disclosures. (4) No supplement rule may be harsh, as cases and issues sometimes evolve. The standard should be that supplemental information be*

allowed, if it can be done without prejudice to the other party, e.g., a year before the trial.

(5) Expert witness testimony shall not be permitted except as provided by Rule 702 of the Michigan rules of evidence or as otherwise ordered by the tribunal. Such testimony does, however, require both of the following:

(i) The party offering the expert witness to disclose the identity of that witness no less than 35 days before the conclusion of discovery unless otherwise ordered by the tribunal on its own initiative or upon motion for good cause shown.

(ii) The admission of the expert witness' valuation disclosure or written summary into evidence.

- *(5) Expert witness. The 35 day disclosure after close of discovery rule seems to contradict parts 1-3.*
- *As long as it is clear that the wider administrative rule standard applies, using 702 is not a problem.*
- *Don't make this process much different from circuit court. The disclosure of reports is largely for the Tribunal's benefit. It should not hamper a party's presentation of its case.*

~~(2) A party shall provide the other party or parties and the tribunal with the name and address of any person who may testify and with a general summary of the subject area of the testimony, as provided by order of the tribunal. A person who is not disclosed as a person who may testify shall not be permitted to give testimony, unless, for good cause shown, the tribunal permits the testimony to be taken.~~

- *TTR 252 now requires valuation disclosures for expert witnesses and written summaries of expert witness testimony if that expert witness is not providing a valuation disclosure. This would prevent review appraisers from testifying and/or rebuttal witnesses from testifying who are witnesses and have not timely filed a written summary of their expected testimony. This fails to recognize that sometimes we don't know what their expected testimony will be until we get into trial.*
- *TTR 252 also requires under subsection (5) that expert witness testimony shall not be permitted except as provided by MRE 702, and in addition the expert witness has to be disclosed 35 days prior to the close of discovery and their valuation disclosure or written summary must be put into evidence.*
- *§252 – Expert Witnesses – Are we now going to follow the Michigan Court Rule that requires the facts upon which an expert witness renders his/her opinion to be introduced into evidence? (I doubt if this could work with value witnesses.) What about the rulings by some Tax Tribunal members discounting the validity and/or credibility of an expert valuation witness's "valuation disclosure" unless that witness is a member of a recognized appraisal association requiring compliance with USPAP, unless that report complies with USPAP, etc.? Springing this sort of a requirement on the parties, when it is not required by the rules, and after it is too late to submit a valuation disclosure by an appropriate witness and/or to change the valuation disclosure to comply is grossly unfair. If this is required, it should be noted in the rules, if not – that should be noted as well.*
-

R 205.1255 **In camera review** ~~Interrogatories to parties~~.

Rule 255. (1) ~~A~~ **If a** party **objects to the disclosure of information or documents on the grounds that the information, documents, or portions of documents are protected from disclosure by law, rule, or privilege, then the party** ~~to a proceeding~~ may **file a motion requesting the issuance of a protective order. The motion shall be filed within 21 days after the discovery that the information or documents are being sought and specifically identify the following:**

(a) The information, documents, or portions of documents for which protection is sought.

(b) The law, rule, or privilege that supports non-disclosure.

(c) The facts that support non-disclosure under the identified law, rule, or privilege.

(2) The motion shall inform the tribunal as to whether there is any opposition to the motion and provide dates for an in camera review of the information and documents ~~serve upon all adverse parties written interrogatories to be answered by the party to whom the interrogatories are directed~~.

(3) The tribunal shall either enter an order denying the motion or enter an order setting a date or dates for the in camera review. If an order is entered setting a date or dates for an in camera review, then the parties shall appear at the tribunal on the date or dates set for the in camera review and the party requesting the issuance of protective order shall provide the tribunal's chief clerk with the information in writing and a copy of each document for which protection is requested. The parties shall remain at the tribunal during the in camera review so as to be available to respond to questions, if any, by the tribunal judge conducting the in camera review.

(4) Upon conclusion of the in camera review, the written information and documents shall be returned to the party that provided the written information and documents and the tribunal shall enter an order granting or denying the motion, in whole or in part.

(5) If a party refuses to disclose the information or documents and refuses to provide the information in writing and documents for an in camera review as ordered by the tribunal, then the tribunal may place the party in default or issue an order as justice may require. The order may provide for the exclusion of evidence or testimony relating to the information and documents.

(6) For purposes of this rule, the written information and documents provided for in camera review under this rule shall not be considered part of the case file or part of the tribunal's public record until the written information and documents are formally filed with the tribunal or offered and admitted into evidence.

~~(2) Interrogatories shall be answered separately and fully in writing under oath. If an interrogatory is objected to, the reasons for objection shall be stated in place of an answer. The answers shall be signed by the person making them and shall contain information that is available to the party served or that could be obtained by the party from its employees, agents, representatives, or persons who may testify on the party's behalf. The party to whom the interrogatories are directed shall serve a copy of the answers on the party submitting the interrogatories and on all other parties within 28 days after service of the interrogatories.~~

~~(3) If any of the interrogatories have not been answered within the time specified under subrule (2) of this rule, then the tribunal, on motion and for good cause shown, may issue an order compelling a response. A party who fails to answer interrogatories pursuant to an order of the tribunal may be placed in default as provided by R 205.1247.~~

~~(4) To the extent that answers are admissible as evidence before the tribunal, answers to interrogatories may be used against the party making them, and an adverse party may introduce an answer that has not been previously offered in evidence by a party.~~

~~(5) A person who answers interrogatories is not the witness of the party who submits the interrogatories.~~

~~(6) By tribunal order, interrogatories may be limited as justice requires to protect the answering party from annoyance, expense, embarrassment, oppression, or violation of a privilege.~~

~~(7) A party who has given a response that was complete when made is not under a duty to supplement the response to include information thereafter acquired, unless ordered by the tribunal, except as follows:~~

~~(a) To supplement the response with respect to any question directly addressed to the identity and location of persons having knowledge of discoverable matters, or the identity of each person expected to be called as a witness at the hearing, the subject matter on which the witness is expected to testify, and the substance of the witness's testimony.~~

~~(b) To amend a prior response that the party knows was incorrect when made based on information obtained by the party, or to amend a prior response that was correct when made, but that is no longer true and failing to amend the response is, in substance, a knowing concealment.~~

- *TTR 255 provides for the in camera review of documents. Previously TTR 255 dealt with interrogatories and discovery.*
- *255 In camera review of discovery. What if providing certain documents is burdensome, and irrelevant, as well as arguably privileged? Must this motion be filed along with the other objections?*

R 205.1257 ~~Depositions.~~**Rescinded.**

~~Rule 257. Parties may stipulate to take depositions or may, by written motion, request to take the testimony of any person, including a party, by deposition for the purpose of discovery or for use as evidence in the action, or for both purposes, and the tribunal, in its discretion, may order the taking of depositions.~~

- *TTR 257 allowing the parties to stipulate to the taking of depositions has been rescinded.*

R 205.1260 ~~Compelling production of documents and things for inspection, copying, or photographing.~~ **Rescinded.**

~~Rule 260. (1) After a petition invoking the jurisdiction of the tribunal has been filed, the tribunal may, upon motion of a party, do either or both of the following:~~

~~(a) Order a party to produce, and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents , papers, books, records, accounts, letters, photographs, objects, or tangible things which are not privileged, which come within the scope of discovery permitted by R 205.1255, and which are in the party's possession, custody, or control.~~

~~(b) Order a person who has been served with a subpoena duces tecum to permit the inspection and copying or photographing of the books, papers, documents, or tangible things subpoenaed.~~

~~(2) The order shall specify the time, place, and manner of making the inspection, and copies, photographs, or samplings and may prescribe terms and conditions as are just.~~

~~(3) If the party or person claims that the item is not in his, her, or its possession or control or that he, she, or it does not have information calculated to lead to discovery of the item's whereabouts, then he, she, or it may be ordered to submit to examination before a tribunal member or to other means of discovery regarding the claim.~~

- *TTR 260 relative to the compelling of production of documents has been rescinded.*

R 205.1264 **Motion to compel; consequences** ~~Consequences~~ of refusal to make discovery.

Rule 264. **(1) The filing of a motion compelling a response to a discovery request or an appearance for a scheduled deposition and consequences for failure to comply with an order compelling a response or appearance are governed by Rule 2.313 (B)(2), (C), and (D) of the Michigan court rules.**

(2) The party filing the motion to compel a response to a discovery request shall attach to the motion a copy of the discovery request and any responses thereto.

(3)~~(1)~~ If a party or other person refuses to **respond to a discovery request or appear for a deposition** ~~answer a question~~ after being ordered to do so by the tribunal, then the proponent of the **discovery request or deposition** ~~question~~ may file a petition with the circuit court for Ingham county or the county in which the discovery **or deposition** is being taken to compel the party or person who is ordered to make discovery to comply with the order of the tribunal.

(2) ~~If a party refuses~~ **A party's refusal to** obey an order made under **this rule** ~~R 205.1255(3) or an order made under R 205.1260, then~~ **shall result in the automatic placement of that party in default and may, if the party fails to cure the default by complying with the order within 21 days from the date the party was originally required to comply or as otherwise ordered by the tribunal, result in the scheduling of a default hearing or entry of default judgment, as provided by these rules. A motion to set aside default is required to set aside the automatic default provided in this subrule. See** ~~the tribunal may issue orders in regard to the refusal as justice requires or as provided in~~ R 205.1247. **A party placed in default under this subrule is also precluded from conducting any further discovery until the default is set aside.**

- *TTR 264 has been renamed motion to compel; consequences. And relies on MCR 2.313.*
- *264 Motion to compel. Now using MCR 2.313, and circuit court to compel compliance with a Tribunal order. This might change the way discovery is held, but may raise the cost of litigation for all parties.*

R 205.1265 Stipulations of fact, documents, and evidence.

Rule 265. THE TRIBUNAL HAS ELIMINATED THIS PROPOSAL.

- *TTR 265 requires stipulations of fact by the parties and provides procedures where a party refuses to fail or stipulate to a fact.*
- *265 Stipulation of fact. All new.*
- *§265 – Stipulations of Fact, documents in evidence – It must come later in the rules – but I have not yet seen anything relating to the exchange of valuation reports, whether they must be exchanged simultaneously, etc., although there is provision for filing with the Tribunal in lieu of service when an exchange is required. Shouldn't the exchange, or staggered filing, as the case may be, be left to the discretion of the judge to whom the case is assigned? In any event, it should be established early on when this will be required to be accomplished, given that in some cases appraisals can take many months to prepare and/or busy appraisers may need many months' advance notice. (I would suggest considering letting the judge determine if the appraisals should be staggered.*

This would result in more settlements and eliminate surprise. It would also eliminate some discovery.)

R 205.1270 Prehearing conference**; exhibit and witness lists**.

Rule 270. (1) ~~Except as provided by R 205.1249 or as otherwise ordered by the~~ The tribunal **may, following the completion of discovery or as otherwise ordered by the tribunal, conduct**~~, a~~ prehearing **conferences** ~~conference shall be held in all proceedings before the entire tribunal~~ **to discuss settlement, briefing requirements, hearing procedures, and the use of depositions and exhibits**.

(2) **Parties ordered to appear for a prehearing conference shall file a statement of the values/taxes in dispute and a prehearing brief addressing the issues raised by the pleadings. The statement of values/taxes in dispute shall be in a form required by the tribunal. The prehearing brief shall be filed with indexed copies of any case law cited in the brief. The statement of the values/taxes in dispute and prehearing brief shall be filed not** ~~Not~~ less than ~~14~~ **21** days before the prehearing conference **unless otherwise ordered by the tribunal**~~, each party shall exchange and file with the clerk a prehearing statement in a form determined by the tribunal~~.

(3) Parties ordered to appear for a prehearing conference in a property tax matter shall file final witness lists not less than 42 days before the prehearing conference or as otherwise ordered by the tribunal. The witness list shall provide the name, title, address, and brief summary of the subject matter of the testimony of each witness identified on the list. Witnesses that are not on the list shall not be permitted to give testimony except upon motion for good cause shown.

(4) Parties ordered to appear for a prehearing conference in a property tax matter shall file final exhibit lists before the conclusion of the prehearing conference unless otherwise ordered by the tribunal. The exhibit list shall specifically identify each exhibit. Exhibits that are not on the list shall not be admitted into evidence except upon motion for good cause shown.

~~(3) The purposes of the prehearing conference are as follows:~~

~~(a) To specify, in a property tax appeal, the present use of the property, the use for which the property was designed, and the classification of the property.~~

~~(b) To specify all sums in controversy and the particular issues to which they relate.~~

~~(c) To specify the factual and legal issues to be litigated.~~

~~(d) To consider the formal amendment of all petitions and answers or their amendment by prehearing order, and, if desirable or necessary, to order that the amendments be made.~~

~~(e) To consider the consolidation of petitions for hearing, the separation of issues, and the order in which issues are to be heard.~~

~~(f) To consider admissions of fact to avoid unnecessary proofs, including the level of assessment and authenticity of documents, such as statutes, ordinances, charters, and regulations.~~

~~(g) To identify all witnesses.~~

~~(h) To identify all exhibits in support of the main case or defense and admit the authenticity of exhibits if possible.~~

~~(i) To estimate the time required for hearing.~~

~~(j) To discuss the possibility of settlement, including settlement efforts to date.~~

~~(k) To consider all other matters that may aid in the disposition of the proceeding.~~

~~(4) When a case is ready for prehearing as determined by the tribunal, the clerk shall schedule the matter for a date-certain prehearing at a time and place to be designated by the tribunal or shall place the proceeding on a prehearing general call.~~

(5) Not less than 28 days before a date-certain prehearing, unless otherwise ordered by the tribunal, the clerk shall send notice of the time, date, and place of the date-certain prehearing to all parties. **At the timely request of either party or at the initiative of the tribunal, the prehearing conference may be held telephonically. There is no fee for the filing of this request.**

~~(6) Not less than 28 days before the commencement of a prehearing general call, unless otherwise ordered by the tribunal, the clerk shall send notice of the prehearing general call and an order of prehearing procedure to all parties whose case is placed on the prehearing general call. The notice shall set forth the time period in which the prehearing will be held and the dates for the filing and exchange of valuation disclosures and prehearing statements.~~

~~(7) The member or hearing officer who conducts the prehearing conference shall inquire of the parties as to whether or not all claims arising out of the appealed finding, ruling, determination, decision, or order have been joined. The answers to the inquiry and each finding, ruling, determination, decision, or order pertaining to the claims shall be included in the summary of the results of the conference.~~

(6)~~(8)~~ The member ~~or hearing officer~~ who conducts the prehearing conference ~~shall~~ may prepare, and cause to be served ~~upon~~ **on the parties' authorized representatives or, if there is no authorized representative, on the party or** parties ~~or their representatives~~, not less than 14 days ~~in advance of~~ **before the** hearing, an order summarizing the results of the conference ~~specifically covering each of the items stated in the rule~~. The ~~summary of results~~ **order shall control** ~~controls~~ the subsequent course of the proceeding unless modified at or before the hearing by the tribunal to prevent manifest injustice.

~~(9) The member or hearing officer who conducts the prehearing conference may direct a party or the party's authorized representative to furnish the tribunal with a hearing brief as to the legal issues involved in the proceeding.~~

~~(10) Discovery shall not be conducted after completion of the prehearing conference, unless otherwise ordered by the tribunal.~~

~~(11) Failure to appear at a duly scheduled prehearing conference may result in the dismissal of the appeal or the scheduling of a default hearing as provided in R 205.1247(3).~~

- *TTR 270 deals with the prehearing conference and exhibit and witness lists and provides that a prehearing brief needs to be filed before the prehearing conference 21 days before the prehearing conference, with final witness lists provided 42 days before the prehearing conference. However, this same rule only requires 28 days notice before the prehearing conference. And provides that the prehearing conference may be held telephonically.*
- *270 Prehearing conference. Rule is all new, and such conferences are not always required. Rule may make them more useful.*

R 205.1275~~ Supplemental discovery and prehearing procedure.~~ **Rescinded.**

~~Rule 275. The tribunal may issue orders making changes in the prehearing and discovery procedures fixed by R 205.1250 to R 205.1270 as justice may require to achieve a full and fair hearing of a matter before the entire tribunal.~~

- *You should consider leaving this provision in. It provides the Tribunal discretion to address unique circumstances.*

R 205.1278 **Date certain hearings; hearing** ~~Hearing~~ docket**; hearings on briefs**.

Rule 278. (1) When a proceeding is ready for hearing, the clerk shall schedule the matter for a date-certain hearing at a time and place to be designated by the tribunal or ~~shall~~ place the case on a general call. The clerk shall send notice of the time, date, and place of a date-certain hearing to all parties or their representatives not less than 28 days before the hearing, unless otherwise ordered by the tribunal. When a general call is established, the clerk shall send notice of the time, date, and place for the hearing of case number 1 on the general call to all parties or their representatives listed on that general call not less than 28 days before the hearing, unless otherwise ordered by the tribunal. In all succeeding cases that appear on the general call, the parties or their representatives shall be telephonically notified by the clerk not less than 48 hours before the hearing.

(2) ~~The tribunal~~ **A proceeding not requiring a hearing for the submission of evidence, for example, where sufficient fact have been admitted, stipulated, established by deposition, or included in the record in some other way,** may, upon **joint** motion ~~or upon its own initiative~~, **be submitted at any time for decision** ~~adjourn a hearing~~. **The parties need not wait for the proceeding to be calendared for hearing and need not appear at the tribunal.**

- *(2) Submission on briefs an improvement.*

(3) The submission of a proceeding for decision, under subrule (2) of this rule, does not alter a party's burden of proof, as provided by law.

- *TTR 278 provides that a date certain may be given for a hearing, or the hearing may be held on the evidence and briefs already at the Tribunal without the need for submission of evidence at trial.*
- *278 Date certain hearings. General call still around. It may be helpful if the Tribunal would provide a list of cases, **with their representatives,** that are scheduled for hearings during the same time period, so representatives can better prepare their cases.*

R 205.1280 Subpoenas.

Rule 280. **A subpoena for the purpose of conducting a deposition may be issued by the tribunal or a party, as provided by Rules 2.305, 2.306, 2.307, and 2.506 of the Michigan court rules. All other subpoenas shall be issued by the tribunal.**

~~(1) On written request of a party to a proceeding, the tribunal, through the clerk, shall issue subpoenas for the attendance and testimony of witnesses and the production of evidence at hearing, including, but not limited to, books, records, correspondence, and documents in their possession or under their control.~~

~~(2) A party may serve a subpoena by certified mail or by delivery in person as provided by rule 2.105 of the Michigan Rules of Court. However, a party may not serve a subpoena less than 3 business days before a scheduled hearing, unless otherwise ordered by the tribunal.~~

~~(3) A witness to whom a subpoena has been issued may file a motion under R 205.1230 to revoke the subpoena if the evidence sought to be produced does not relate to a matter in issue, if the subpoena does not describe the evidence sought with sufficient particularity, or if the subpoena is invalid for any legal reason.~~

~~(4) Proceedings to enforce a subpoena may be commenced in the circuit court for Ingham county or the county in which the hearing is held.~~

- *TTR 280 now allows the parties to issue subpoenas to conduct depositions as provided by MCR 2.305, 2.306, 2.307 and 2.506. This would open up most assessors to harassment by unscrupulous Petitioner's Representatives.*
- *280 Subpoena. Good rule, long overdue; but should also apply to hearings.*

R 205.1283 Conduct of hearings.

Rule 283. (1) The **Michigan Rules of Evidence for a non-jury civil case in circuit court shall be followed to the fullest extent except that the** tribunal may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Irrelevant, immaterial, or unduly repetitious evidence may be excluded. Effect shall be given to the rules of privilege recognized by law.

(2) Witnesses in a proceeding shall swear or affirm before the presiding member or hearing officer to give full and truthful testimony.

(3) ~~Without leave of the tribunal~~ **In a property tax matter**, a witness may not testify as to the value of property without **having timely submitted** ~~submission of~~ a valuation disclosure. ~~This does not, however, preclude~~ **The presiding tribunal judge may, upon motion or his or her own initiative, permit** an expert witness ~~from rebutting~~ **to rebut** another party's valuation evidence or ~~testifying~~ **testify** as to the value of the property in issue if the expert ~~witness's~~ **witness'** value conclusions were adopted by the party and included in the party's valuation disclosure.

- *TTR 283(3) is contrary to the prior requirement of the Tribunal requiring a summary of expert testimony. This subrule allows a presiding judge upon motion or his own initiative to permit an expert witness to rebut another party's valuation evidence. It would only permit rebuttal testimony from the appraiser who prepared the parties' valuation disclosure. In essence, it would prevent review appraisers from testifying.*
- *(3) Rebuttal testimony should be allowed automatically, rather than discretionarily.*

(4) If a witness is not testifying as to the value of property or as an expert witness, then his or her testimony in the form of opinions or inferences is limited to opinions or inferences that are rationally based on the perception of the witness and that are helpful to a clear understanding of his or her testimony or the determination of a fact in issue. See ~~rule~~ **Rule** 701 of the Michigan rules of evidence.

(5) All proceedings before the tribunal shall be recorded either electronically or stenographically, or both, in the discretion of the tribunal.

- *TTR 283 now requires the Michigan Rules of Evidence to be applied to the fullest extent except that the Tribunal may admit and give probative effect to evidence of a type commonly relied upon.*
- *283 Conduct of hearings. Unclear how non-lawyer members are to rule upon the hearsay objection. Hearsay is inherent in every appraisal, and often in every assessment.*

R 205.1285 Briefs.

Rule 285.~~(1) The tribunal may order the parties to submit prehearing briefs addressing legal issues not fully addressed in the parties' valuation disclosures and designate the manner and time for filing and serving the briefs.~~

(1)~~(2)~~ The tribunal may order the parties to submit posthearing briefs ~~containing proposed findings of fact, conclusions of law, and posthearing arguments, or any combination thereof and designate the manner and time for filing and serving the briefs~~. **Except as otherwise ordered**

by the tribunal, posthearing briefs shall be filed within 35 days after the conclusion of the hearing, the final submission of proofs, or the filing of a transcript of the hearing, whichever event is later. In lieu of posthearing briefs, the tribunal may, upon motion or its own initiative, order the parties to make oral closing arguments or file a memorandum or statement of authorities.

(2) Except as otherwise ordered by the tribunal, a prehearing or posthearing brief may not exceed 50 pages not including attachments and exhibits, unless otherwise ordered by the tribunal. Briefs must be typed or printed only on 1 side, on 8 ½ by 11-inch paper. Briefs shall have margins on both sides of each page that are not less than 1 inch wide, and margins on the top and bottom of each page that are not less than ¾ inch wide. Text and footnotes shall appear in consistent typeface not smaller than 12-point type with double spacing between each line of text and single spacing between each line of indented quotations and footnotes. Quotations more than 5 lines shall be set off from the surrounding text and indented.

(3) Motions for leave to file a prehearing or posthearing brief in excess of the page limitations of this rule must be filed and granted before the filing of the excessive brief. Such motions are disfavored and shall be granted only for extraordinary and compelling reasons.

- *This is near impossible to achieve before the brief is actually submitted. Take out.*

(4) Briefs shall include all of the following:

(a) A table of contents with page references.

(b) An index of authorities arranged alphabetically and stating the page or pages in the brief at which the authority is cited,

(c) A statement of the nature of the controversy, the tax involved, and the issues to be decided.

(d) A concise statement of the points on which the party relies.

(e) The argument, which sets forth and discusses the points of law involved.

(f) The signature of the party or parties submitting the brief or the signature of the party or parties' authorized representative.

(g) Indexed copies of any case law cited in the brief.

(5) If the tribunal, on its own initiative, concludes that a prehearing or posthearing brief does not substantially comply with the requirements of this rule, then it may order the party that filed the brief to file a supplemental brief within a specified time period correcting the deficiencies or it may strike the nonconforming brief.

- *TTR 285 now requires post hearing briefs to be filed within 35 days after conclusion of the hearing. This is too short of a period of time and should be a little more flexible concerning the amount of transcripts and the length of the trial in each particular case. Furthermore, this rule also contemplates a 50 page brief. Requiring parties to draft 50 page briefs with only two weeks after receipt of all of the transcripts is unnecessarily burdensome and unrealistic.*

R 205.1288~~ Rehearings or reconsideration.~~ **Rescinded.**

~~Rule 288. The tribunal may order a rehearing or reconsideration of any decision or order upon its own initiative or the motion of any party filed within 14 days of the entry of the decision or order sought to be reheard or reconsidered. The filing of a motion for rehearing or reconsideration tolls the appeal period and any party shall have 21 additional days after a~~

~~decision or denial of the motion for rehearing or reconsideration to appeal the decision or order to which the motion related.~~

- *288 Rehearings & Reconsideration. Why eliminate this rule?*
- *I would amend the statute to 21 days from the current standard of 20 days.*

R 205.1290 Witness fees.

Rule 290. A witness **to whom a subpoena has been issued** ~~who is summoned to a hearing or other proceeding, or whose deposition is taken~~, shall receive the same fees and mileage as witnesses in the circuit courts of the state. A witness shall not be required to testify until the fees and mileage provided for have been tendered to him or her by the party at whose instance he or she has been subpoenaed.

PART 3. ~~MATTERS BEFORE~~ SMALL CLAIMS DIVISION RULES

R 205.1301 Scope.

Rule 301. ~~This~~ **The rules in this** part **govern** ~~governs the~~ practice and procedure in all matters before the small claims division of the tribunal**, except as provided by R 205.1111**.

- *TTR 301 is the beginning of the small claims rules.*

R 205.1303~~ Definitions "Homestead property" defined.~~ **Rescinded.**

~~Rule 303. (1) As used in this part, "homestead property" means the portion of a dwelling or unit in a multiple-unit dwelling which is subject to ad valorem taxes and which is owned and occupied as a principal residence by an owner of the dwelling or unit.~~

R 205.1305 Records; fees.

Rule 305. (1) **Upon motion of the parties or on the tribunal's own initiative, a** ~~A~~ formal transcript ~~shall not~~ **may** be taken for any proceeding commenced and completed in the small claims division **and a decision rendered on the record**.

(2) An informal transcript of a small claims proceeding ~~prepared from a recording device or by a stenographer~~ is not a record of the proceeding **unless adopted by the tribunal**.

(3) Fees or costs shall not be charged or allowed on appeals of homestead property in the small claims division, except for appeals of special assessments levied on homestead property. For purposes of this subrule, a property is considered homestead property if it has received a ~~homestead~~ principal residence exemption of not less than 50% as provided in section ~~27~~ **7cc** of the general property tax act**, being MCL 211.7cc**.

(4) Except for homestead property appeals, the following fees shall be paid to the clerk in all small claims division proceedings:

(a) Upon filing a property tax appeal petition **contesting a property's true cash or taxable value***, a fee of $**75.00** ~~25.00 if the amount of state equalized value in controversy is $20,000.00 or less.* If the amount of state equalized value in controversy is more than $20,000.00, then the filing fee shall be as provided in R 205.1202.*~~**

> ***If a stipulation is filed in lieu of a property tax appeal petition and the stipulation is acceptable to the tribunal, the filing fee shall be $30.00.**

******The filing fee on multiple, **contiguous** parcels ~~(contiguous)~~ owned by the same person shall be ~~1 filing fee plus~~ $**35.00** ~~5.00~~ for each additional assessed parcel, not to exceed a total filing fee of $**1,000.00** ~~250.00~~.

(b) Upon filing a property tax appeal petition contesting the denial of a principal residence exemption or a qualified agricultural exemption, a fee of $50.00.

(c)~~(b)~~ Upon filing a non-property tax **appeal petition** or **a property tax appeal petition contesting a** ~~any~~ special assessment ~~appeal~~, a fee of $**125.00** ~~25.00 if the amount in dispute is $1,000.00 or less~~. If ~~the amount in dispute is more than $1,000.00~~ **a stipulation is filed instead of a non-property tax appeal petition or a property tax appeal petition contesting a special assessment and the stipulation is acceptable to the tribunal**, ~~then~~ the filing fee shall be ~~as provided in R 205.1202, but shall not be less than~~ $**30.00** ~~25.00~~.

Filing Fee

(d)~~(c)~~ Upon **the** filing **of** a **motion, other than a motion for immediate consideration, motion to adjourn, motion to extend time, motion to set aside default or dismissal, motion for summary disposition or partial summary disposition, or motion for reconsideration** ~~request for a rehearing pursuant to R 205.1348, a fee of~~**……...** $25.00.

(e) Upon the filing of a motion for immediate consideration…….……...$50.00.

(f) Upon the filing of a motion to adjourn……...$50.00.

(g) Upon the filing of a motion to extend time……$50.00.

(h) Upon the filing of a motion to set aside default or dismissal……...$50.00.

(i) Upon the filing of a motion for summary disposition or partial summary disposition……$50.00.

(j) Upon the filing of a motion for reconsideration……$50.00.

- *TTR 305 now requires motion fees in small claims matters. The motion fee is now $50.*
- *305(1)-(3) Transcripts allowed! Good rule.*
- *(4) New filing fees. Ouch.*
- *§305 – Small Claims Fees – what about parcels contiguous to the principal homestead parcel?*

R 205.1310 Jurisdiction.

Rule 310. (1) A property tax matter may be heard in the small claims division if any 1 of the following properties is exclusively involved:

(a) Residential or homestead property.

(b) Agricultural property.

(c) Income-producing residential property consisting of less than 4 rental units.

(d) Any other property where the state equalized valuation in contention is not more than **the amount provided by law** ~~$100,000.00~~.

- *TTR 310(d) dramatically changes the scope of small claims matters to "any other property where the state equalized value in contention is not more than the amount provided by law." I am not quire sure what this means or how this is going to effect the scope, but this needs to be clarified. My guess is that it is referring to the statute and in particular Section 62 of the Tax Tribunal Act where it limits state equalized and taxable value disputes to $100,000 and all other disputes to $6,000 in the amount of taxes.*

Furthermore, TTR 305(4)(a) now appears to be contrary to statute, and in particular section 62 of the Act.

(2) A non-property tax matter may be heard in the small claims division if the amount of tax in dispute is not more than **the amount provided by law** ~~$6,000.00~~, exclusive of interest and penalty charges.

(3) A property tax matter involving a special assessment may be heard in the small claims division if the amount of assessment in dispute is not more than the amount provided by law.

- *310 Jurisdiction now raised, by statute?*

R 205.1312 Petitioner's election of small claims division.

Rule 312. ~~(1) A petitioner who wishes to have a matter heard in the small claims division shall elect to do so.~~

~~(2)~~ A petitioner who files ~~an initial letter of appeal to~~ **a petition with** the tribunal without specifying the division of the tribunal in which the appeal is being filed will be presumed to have elected to have the matter heard in the small claims division.

~~(3) If a petitioner returns, in a timely manner, an unsigned small claims petition form with a petition electing to have the matter heard by the entire tribunal as provided in R 205.1240, then the petition may be deemed to have been filed in accordance with section 35(2) of the act and, with leave of the tribunal, the matter will proceed before the entire tribunal. See also R 205.1205.~~

- *312 Election. No more letter appeals.*

R 205.1313 ~~Appearance and protest to local board of review;~~ **Subsequent year assessments**.

Rule 313. ~~(1) In assessment appeals, the valuation of the subject property shall be protested before the local board of review.~~

(1)~~(2)~~ The appeal for each subsequent year for which an assessment has been established is added automatically to the petition at the time of hearing. For the purposes of this subrule, an assessment has been established once the board of review has confirmed the assessment roll at the statutorily required March board of review meeting.

(2) The tribunal may, on request and for good cause shown, exclude subsequent years from consideration at the time of hearing, if the subsequent years can be handled more expeditiously in a subsequent proceeding.

- *313 Automatic adding of years, unless on request, years to be excluded.*

R 205.1315 Transfers.

Rule 315. (1) Not less than ~~14~~ **28** days before a hearing, a party or intervenor, ~~by motion and notice to the opposing party or parties,~~ may, by motion, request a transfer of the proceeding from the small claims division to the entire tribunal. If the motion is filed with the tribunal after the notice of hearing in the proceeding has been issued by the tribunal, ~~then~~ the parties shall appear at the hearing and be prepared to conduct the hearing, unless otherwise ordered by the tribunal.

(2) If the request is granted, **then** the moving party shall pay the **appropriate entire tribunal fee, less any amount already paid, and** the reasonable expenses incurred by the other parties **that are** incidental to the transfer and any costs resulting from subsequent appeals.

(3)~~(2) With the permission of the petitioner, the~~ **The** tribunal may refer a proceeding to the entire tribunal for ~~a~~ decision.

- *TTR 315 now requires a motion to transfer a proceeding from small claims to the entire Tribunal to be filed 28 days in advance, as opposed to the current 14.*
- *315 Transfers. Requests now must be 28 days prior. Notices of hearings should be sent out earlier.*
- *On cases that are overturned, still no allowance to transfer to ET. This sometimes causes due process problems. In the courts, small claims can be opted out of. This is important, "where due process lite", no cross examination, very limited time to present proofs, and often, lack of an expert hearing officer is an issue.*

R 205.1317 Appearance and representation**; change of address; dismissal for failure to appear; hear on file; decorum**.

Rule 317. (1) A party may appear for himself, ~~or~~ herself, **or itself**, be represented by an attorney, or be represented by another person that he, ~~or~~ she, **or it** chooses.

(2) Authorized representatives shall enter an appearance either by subscribing the petition initiating the participation of a party in a proceeding or by filing an appearance with the tribunal.

(3) The tribunal may require an authorized representative to provide a written statement of authorization signed by the party for whom the representative appears.

(4) An authorized representative may withdraw from a proceeding or be substituted for only by order of the tribunal, as provided by R 205.1215.

(5) In the absence of an appearance by an authorized representative, a party is deemed to appear for himself, herself, or itself.

(6) A party shall state in the initial petition his, her, or its name, address, and telephone number and promptly inform the tribunal and all parties of any change in that information.

(7) An authorized representative shall state in the initial petition or appearance the authorized representative's name, address, and telephone number and promptly inform the tribunal and all parties of any change in that information.

(8)~~(2)~~ Petitioner's failure to appear or be represented at a scheduled hearing may result in a dismissal of the appeal.

(9)~~(3)~~ The tribunal may, upon request of a party filed with the tribunal before the hearing scheduled in that proceeding, conduct a hearing in the absence of the party. If a hearing is conducted with a party being absent pursuant to his, ~~or~~ her**, or its** request, ~~then~~ the tribunal shall render a decision on all evidence and pleadings properly submitted by both parties not less than 14 days before the date of the scheduled hearing as provided by R 205.1342(2). **There is no fee for the filing of this request.**

(10)~~(4)~~ A person who appears before the small claims division shall **not engage in discourteous conduct toward the tribunal, witnesses, or other parties.**

- *§317 – Appearance and Representation – I would very much like to see the Tribunal promulgate a rule requiring a representative who is not a member of the Michigan State Bar in an entire Tribunal matter to pass a simplified exam, showing the representative has read and understands how to proceed in the Tax Tribunal. Alternatively the representative could show that he and/or she has attended an appropriate training session. This would not apply to persons appearing with respect to their own properties and/or with respect to the property of an employer.*

R 205.1320 Commencement of proceedings.

Rule 320. ~~(1) Subject to the provisions of R 205.1312, a~~ A proceeding before the small claims division ~~may be~~ **is** commenced by mailing or delivering a ~~letter~~ **petition** to the tribunal within the time period prescribed by statute. See also R 205.1205. The ~~letter~~ **petition** shall provide the name and mailing address of the petitioner and respondent. In property tax appeals, the **petition** ~~letter~~ shall include the township or city and county in which the property is located. If available, a copy of the notice or action taken by the local board of review or, in the case of an appeal of a special assessment, a copy of the resolution confirming the special assessment roll shall be attached. In nonproperty tax appeals, a copy of the final assessment notice or other order being appealed shall be attached.

~~(2) Upon receipt of the letter from the petitioner, the clerk of the tribunal shall send the petitioner a form to be completed and returned to the tribunal within 28 days after mailing or as otherwise ordered by the tribunal. Failure to complete and return the form within the 28 days or as otherwise ordered by the tribunal shall result in a dismissal of the petition.~~

- *TTR 320 now requires the filing a Petition in order to initiate a small claims matter as opposed to just a filing of a letter.*
- *320 Commencement. Will there be a form available? May also be problems with assessment notice attachment requirement, as in ET.*

R 205.1330 Notice to respondent of appeal.

Rule 330. Upon the receipt of ~~the completed~~ a petition ~~form~~ from a petitioner in a timely manner, the clerk of the tribunal shall forward a copy of the ~~completed form~~ **petition** to the respondent **and an answer form to be completed and returned as provided by R 205.1332**. If a petitioner has submitted supporting documentation with his or her ~~completed~~ petition ~~form~~, the petitioner shall also serve a copy of the supporting documentation upon the respondent not less than 14 days before the date of the scheduled hearing as provided by R 205.1342(2).

R 205.1332 Answers.

Rule 332. (1) An answer to a petition shall be filed with the tribunal within 28 days after ~~receipt by the~~ **mailing of the answer form to** respondent ~~of the petition form completed by the petitioner~~ **or** as **otherwise** required by **the tribunal. See** R 205.1330. The answer shall be on **the** ~~a~~ form provided by the tribunal or shall be in the form of a written response that is in substantial compliance with the tribunal's form. The answer shall set forth the facts upon which the respondent relies in defense of the matter.

(2) For a special assessment appeal, the answer shall specify the statutory authority under which the special assessment district was created.

(3) The respondent shall serve the petitioner with a copy of the answer and **any** supporting documentation filed with the tribunal.

~~R 205.1333 Stipulations.~~ **Rescinded.**

~~Rule 333. A consent judgment may be entered upon submission of a stipulation by all parties in interest as to true cash value, if the stipulation is acceptable to the tribunal.~~

- *TTR 333 is rescinded and this rule dealt with the entry of a consent judgment by stipulation. It does not appear that you can now enter into a stipulation in the small claims division.*

R 205.1335 Hearing sites; accessibility; accommodations.

Rule 335. (1) For property tax appeals, the hearing ~~shall~~ **may** be conducted **telephonically, by video conferencing, or in-person. If the hearing is an in-person hearing, then the hearing shall be conducted** in the county in which the property is located or the county contiguous to the county in which the property is located**, or at a site agreed upon and approved by the tribunal**~~. However, a party shall not be required to travel more than 100 miles from the situs of the property to the hearing site~~, except that a rehearing by a tribunal member shall be at a site to be determined by the tribunal.

(2) For non-property tax appeals, the hearing ~~shall~~ **may** be conducted **telephonically, by video conferencing, or in-person. If the hearing is an in-person hearing, then the hearing shall be conducted** at a site to be determined by the tribunal.

(3) For all appeals, ~~the~~ **a video conference or in-person** hearing shall be conducted in a location that is accessible to mobility-impaired individuals. Accessible parking shall also be available.

(4) A person who has a disability and who needs to be accommodated for effective participation in a hearing shall contact the tribunal in writing or telephonically not less than 7 days before the scheduled hearing date.

- *TTR 333(sic) now allows for hearings in small claims matters telephonically, by video conference or in person. Please note this should be TTR 335 not 333.*
- *335 Hearings sites. Contiguous county often inconvenient to both parties.*

R 205.1340 Notice of hearing.

Rule 340. ~~The clerk~~ **Notice** shall **be sent** ~~send~~ **to** the parties **or their authorized representatives** ~~notice~~ of the **time and date of the hearing, if telephonic, and the** time, date, and place of the hearing**, if by video conference or in-person,** not less than 14 days before the hearing.

- *TTR 340 requires that the Tribunal only send notice 14 days before hearing. However, this would not give a party time to comply with the 28 day requirement for filing of a motion to transfer and under TTR 342, evidence has to be submitted 14 days in advance. A party would not be able to comply with the requirements of submission of evidence as well.*
- *340 Notice of hearing. Notice should be sent well in advance of hearing. 14 days is not enough time to allow petitioner to opt out of these hearings.*

R 205.1342 Conduct of hearing.

Rule 342. (1) The tribunal may admit~~,~~ and give probative effect to~~,~~ evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Irrelevant, immaterial, or unduly repetitious evidence may be excluded. Effect shall be given to the rules of privilege recognized by law.

(2) A copy of a valuation disclosure or other written evidence to be offered in support of a party's contentions ~~as to the subject property's value~~ shall be filed with the tribunal and served upon the opposing party **or parties** not less than 14 days before the date of the scheduled hearing.

(3) Service required in subrule (2) of this rule shall be made on the opposing party or parties' authorized representative, if an authorized representative has entered an

appearance or filed a pleading or other document in the proceeding on behalf of that party or parties.

(4) Failure to comply with this ~~subrule~~ **subrules (2) and (3) of this rule** may result in the exclusion of the **valuation disclosure or other written** evidence at the time of the hearing because the opposing party **or parties** may have been denied the opportunity to adequately consider and evaluate the evidence before the date of the scheduled hearing.

(5)~~(3)~~ A witness who testifies at a hearing shall swear or affirm to give full and truthful testimony.

R 205.1345 Decision to be written; effective date; mailing copy of decision and order to parties.

Rule 345. (1) A decision of the small claims division shall be in writing.

(2) A decision shall become **final when signed by a tribunal member and** effective when officially entered by the clerk, at which time the clerk shall mail a copy of the **final** decision and order to all parties **or their authorized representatives** ~~to the proceeding~~.

R 205.1348 Exceptions ~~Rehearings~~; filing of **exceptions** ~~request; filing of response to request~~; **service of exceptions;** location **of rehearing**; ~~service of request;~~ "good cause" defined.

Rule 348. (1) A party may **file exceptions to** ~~or reconsideration of~~ a decision by a hearing officer ~~or referee~~ by filing ~~a~~ written exceptions ~~request for a rehearing~~ with the tribunal and submitting a copy to the opposing party **or parties** within **20** ~~21~~ days of the entry of the ~~opinion and judgment by~~ **proposed decision rendered** by the hearing officer ~~or hearing referee~~. The ~~request~~ **exceptions** shall demonstrate good cause as to why **the proposed decision should be modified or** a rehearing ~~shall be~~ held. ~~The opposing party may file a response to the request for rehearing within 14 days after service of the request on the party.~~ The rehearing, if held ~~granted~~, shall be conducted at a site to be determined by the tribunal as provided by R 205.1335 and shall not be limited to the evidence presented to the hearing officer ~~or hearing referee~~.

(2) The party who ~~requests~~ **files** the **exceptions** shall also file with the tribunal, or include as a part of the **written exceptions** ~~request for a rehearing~~, a statement attesting to the service of the **exceptions** ~~request~~ on the opposing party **or parties**. The statement shall specify the date and method by which the **exceptions were** ~~request was~~ served on the opposing party **or parties**.

(3) For purposes of this rule, service of the exceptions ~~request~~ on the opposing party **or parties** may be accomplished by mailing the **exceptions** ~~request~~ to the opposing party **or parties'** ~~party's~~ last known **addresses** ~~address~~ by first-class mail or by delivery in person as provided in ~~rule~~ **Rule** 2.107 of the Michigan ~~Rules of Court~~ **court rules**.

(4) For purposes of this rule, "good cause" means any of the following:

(a) Error of law.

(b) Mistake of fact.

(c) Fraud.

(d) Any other reason the tribunal deems sufficient and material.

- *348 No more rehearing motions; instead, party files exceptions, and rehearing may be granted.*